***United States Court of Appeals***

***for the Second Circuit***

# APPELLANT'S APPENDIX

75-1011

75-1017

# United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

*Appellee,*

—against—

THOMAS McNAMARA,

*Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

## APPENDIX for APPELLANT McNAMARA

**VOLUME II**
**(Pages 579a through 1154a)**

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UNITED STATES COURT OF APPEALS
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CROSS -EXAMINATION

BY MR. GILLEN: (Cont.)

Q In short you say your whole body was injured; is that correct?

A Whatever terminology was used.

Q I'm asking you, you claim your whole body was injured?

A Yes. Various parts of my body.

Q I'm asking you, did you claim your whole body from the top of your head to the soles of your feet was injured?

A As it said, it was a medical terminology, which I do not comprehend and understand.

Q I'll ask you specifically.

Do you now claim that you were injured from the top of your head to the soles of your feet?

A Well, you won't -- I don't know if you correctly mean soles. If my leg was injured, my chest, at time, my arms and my head.

Q What injuries did you sustain to your head?

A Sir, it was written in medical terminology. I was black and blue as I had said before.

Q In the head?

A I had a couple of lumps

Q Where?

Please point, the jury is here, point and show us where these lumps and these black and blue marks were on you.

A As to the present locations, I do not recall at this time.

Q Is it your testimony, sir, that you do not remember the parts of your head that were --

A It was just --

Q Injured on June 5th and June 28th?

A It was just my head and various other -- my parts of my body in generalness.

Q You told us you have black and blue marks?

A That's correct, sir.

Q Where were the black and blue marks on your head?

A They were just all over my body and on the 28th I didn't care where the heck they were.

Q Did you have black and blue marks on your head?

A I -- I was black and blue all over, sir.

Q Did you have these marks on your head, Mr. Goberman? Do you understand my question?

A Yes, sir, I do.

Q Did you have black and blue marks on your head?

A There was whatever the doctor chose to call it -- whatever he described.

Q You mean, you don't recall whether you had black and blue marks on your head?

A I don't know,the terminology is black and blue or whatever words the doctor had used.

Q You do not know what the word head, face, eyes, nose, mouth and ears means; is that correct?

A Mr. Gillen, I do know and I said there was marks all over my entire body.

Q I'm asking you to tell this jury, please, are you claiming you had black and blue marks on your head?

Do you understand my question, sir?

A Yes, sir, I do.

Q And could you please give the jury an answer?

A I do not -- all right.

I do not know the correct terminology of black and blue or whatever the doctor had used.

Q Did you have any marks on your head?

A My head was sore. I don't know what he calls a mark or whatever they want to call it.

Q Did you have visible marks on your head?

MR. RITCHIE: Objection, your Honor. Obviously,

beyond the scope of this witness' knowledge.

THE COURT: What?

MR. RITCHIE: It's obviously beyond the scope of this witness' knowledge, if he had marks on his head.

MR. LEONE: I thought we had -- all we have to do is look in the mirror, Judge.

THE COURT: No, I think that when you say head, you know, there are a lot of us who think that that means back of the hairline.

MR. GILLEN: No.

I said, face, eyes, nose and mouth.

THE COURT: All right.

Ask him if you had any black and blue marks on your face.

THE WITNESS: From -- from my general knowledge, I did not have any on June the 5th on my face and then they were on my face after -- after the June 28th incident.

BY MR. GILLEN:

Q All right.

Then you were hit in the face on June 28th and you had marks? When you went to the doctor, right?

A That's correct, sir.

Q And these were visible marks; isn't that correct?

A That's correct.

Q No question about that, Mr. Goberman?

A No question about it.

Q Now, how about June 28th? Did you tell this jury that you were beaten with blackjacks on June 28th?

A I did not specifically tell the jury that, sir.

Q And you didn't tell this jury that you were beaten with blackjacks on June 5th; isn't that right?

A The second time when you asked the question, I had said I was beaten with blackjacks on June 5th and June 28th.

Q You told that to this jury this morning on your direct examination?

A Not on direct. On the cross-examination or whatever you so call it.

Q I see.

How many blackjacks were there?

A Only one.

Q Were you asked this question -- on June 5th and on June 28th --

A Yes. There was a blackjack present on both occasions.

Q Only one on each occasion; is that right?

A That's correct.

Q Who had it?

A Who? The ones that I directly seen it in their hands, because I tried to cover my face up when the beatings were taking place.

Q This is on the 5th or the 28th you are talking about?

A On both occasions because on both occasions I went down on the floor.

Q Yes?

A The only ones that I could specifically recall at this present time on the incident of June the 28th was Rocco Merolla, Angelo Merolla and Alphonse Merolla.

Q John McNamara, did he have a blackjack?

A I do not recall, sir.

Q Tom McNamara, did he have a blackjack?

A I do not recall, sir.

Q John DeLiso, did he have a blackjack?

A I do not recall, sir.

Q Fat Nicky, thi- person, did he have a black-jack?

A I do not recall, sir.

Q On January 11th, 1974, page 862, were you asked

these questions and did you give these answers?

"Question:" Line 8: "Well, didn't you tell us you remember everything about June 5th and June 28th up until the time you went to the doctor's?

"Answer: That's right, sir.

"Question: June 28th, again McNamara's people beat you with blackjacks; right?

"Answer: That's right, sir.

"Question: This time there was more than one blackjack, right?

"Answer: That's right, sir."

Weren't you asked those questions and didn't you give those answers?

A That's correct. But at this present time as I recall the incident, I only remember one blackjack now, sir. As I have told you.

Q Back on January 11th, 1974, you remembered there was more than one blackjack, right?

MR. RITCHIE: Objection, your Honor. Argumentative.

THE COURT: You've drawn the testimony to his attention.

MR. GILLEN: Yes, your Honor, I have.

THE COURT: All right, next question.

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1 Goberman - cross - Gillen

CROSS-EXAMINATION

BY MR. GILLEN (Cont'd):

Q You remember -- I'll withdraw that.

Is your memory of these events better now today, October 9, 1974, than it was on January 11, 1974?

A I could not honestly say that, sir.

Q Excuse me?

A I could not honestly say that, sir.

Q You've just told us that now you say there is one blackjack but January 11th you said there was more than one; is that right?

MR. RITCHIE: Objection. Argumentative.

THE COURT: We've been over this.

MR. GILLEN: All right. Fine, your Honor.

Q Did you go to the doctor on June 5th?

A No, sir, I did not.

Q Incidentally, since June 28th you went to this doctor, what was his name?

A I just -- at the present time I do not recall his name. I know his first name, Bob.

Q You know him by Bob?

A Yes, sir, I do.

MR. RITCHIE: Your Honor, may I request a side-bar?

THE COURT: Very well.

(The following occurred at side-bar.)

MR. RITCHIE: Mr. McMullen justed noted to me that the way Mr. Gillen has the stand, the podium set up, all of his notes and everything are visible to the last two jurors.

MR. GILLEN: I can't make heads or tails of them. I can't see how jurors can make heads or tails out of them.

THE COURT: Yes, but move the podium.

MR. GILLEN: Yes. Certainly. No problem.

(The following occurred in open Court.)

THE COURT: Don't overdo, Mr. Gillen.

BY MR. GILLEN:

Q How long have you known Bob?

A As you had approached the Judge, sir, I remember the doctor's last name was Schoenfeld.

Q All right.

Now, you know who we are talking about; is that right?

A That's correct.

The doctor who I went to thereafter, June 28th.

MR. LEONE: Your Honor, may I have a moment with counsel?

3 Goberman - cross - Gillen

THE COURT: Yes.

BY MR. GILLEN:

Q Well, Bob, Dr. Bob, when did you go to him?

A At this time I do not recall exactly when. I know it was subsequent to June 28, 1972.

Q How long --

MR. RITCHIE: I request that counsel stand back at the podium.

THE COURT: Please.

MR. GILLEN: I'm sorry.

Q How long after June 28th did you go to Dr. Bob?

A This Dr. Schoenfeld, sir, and I cannot recall the exact date.

Q You call him Bob, though; right?

A All I could remember was the first name.

Q You mean he has on his stationery Bob Schoenfeld, M.D.?

A No. I recalled one of the nurses calling him Bob.

Q His nurse called him Bob?

A That's correct.

Q How long have you known this Bob?

A How long?

Q That's right.

A I would say, I've known him since August, '72.

Q Is that when you went to him?

A No. As I said, sir, I do not recall when I went to Dr. Schoenfeld.

Q What was the name of the doctor you went to on June 28th, the alleged doctor?

A Dr. Ponturo.

Q What is his first name?

A I do not know, sir.

Q Did he have a nurse?

A I think his wife was present because the reason I got him was on a Wednesday and all the other doctors were closed and just kept on going through the phone book. Or had someone go through a phone book for me.

Q Which was it, did you go through the phone book or did you have somebody --

A I had someone go through the phone book for me.

Q Who?

A My wife.

Q Which wife?

A Frances Goberman, my second wife.

MR. GILLEN: Would this be a convenient time, your Honor, before I get into another area? It's 4:26, seven.

THE COURT: How many seconds?

MR. GILLEN: I don't know.

THE COURT: Well, all right. Half a day, Mr. Gillen.

MR. GILLEN: Thank you.

THE COURT: Members of the Jury, please do not discuss the case with one another or anyone on the Jury until it is -- not on the Jury, until it is finally given to you to decide.

10:00 o'clock tomorrow. Be on time.

(Jury excused.)

MR. GILLEN: One moment, Mr. Goberman, please.

THE WITNESS: Sure.

MR. GILLEN: Your Honor, at this time I just wanted to serve upon Mr. Goberman two subpoenas, one personal, and one duces tecum for the production of HarMac records, and I'd ask that my subpoenas be marked for identification.

THE CLERK: Yes, sir. Marked --

THE COURT: Copies of them.

MR. GILLEN: Copies, yes, sir. Copies of subpoenas.

THE CLERK: Defendant McNamara's Exhibits L and M.

(So marked.)

6 THE COURT: What's your standing?

MR. RITCHIE: I'd like to see the subpoenas.

MR. MEISELMAN: Your Honor, so that I may not be delayed on cross-examination tomorrow, could Mr. Ritchie let me have the HarMac records?

MR. RITCHIE: The HarMac or the Bank --

MR. MEISELMAN: The HarMac bank records. If you have the HarMac records, I'd like to see those, too, because they're under subpoena.

MR. RITCHIE: I don't know what HarMac records I have, if any, your Honor.

I do know that I have in my possession records from the Tinker-Marine Midland Tinker National Bank.

I've agreed to turn them over to Mr. Meiselman. I will turn them over to Mr. Meiselman.

I'd like to know what in addition to those records he would like.

MR. MEISELMAN: I'd like to see all of the records of the bank and all of the records of HarMac in connection with this.

THE COURT: Please. The records of the bank probably go back to --

MR. MEISELMAN: No, sir.

THE COURT: -- shortly after Mr. Tinker came of age.

7 MR. MEISELMAN: No, sir. What I am talking about are the -- and let me make it very clear on the record. I have been informed by the bank that the account was opened on March 15, 1972, and was closed in July. There is an interim of several months. I want the records that you may have of HarMac Contracting Corp. and/or Harold Goberman, that you received from the Tinker bank, for that interim period of time.

MR. RITCHIE: Your Honor, the only records that I have subpoenaed from the Marine Midland Tinker National Bank to the best --

THE COURT: All he can get from you is what you have under Rule 17, I suppose.

MR. RITCHIE: Yes.

THE COURT: And/or 16. We could fumble around but in the end, your Brady conscience would overcome you and you'd have to give them to him anyway.

MR. RITCHIE: Yes, your Honor.

(Continued on next page.)

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MR. GILLEN: I have a man in Court, Mr. Darish Schwab, he is a man from the Consumer Affairs Bureau that I subpoenaed for certain documents. I would ask that he be directed to return tomorrow.

THE COURT: If you are paid an additional fee, you must return.

MR. FISCHETTI: One final matter.

I know your Honor's practice. I ask again that Mr. Goberman be directed not to talk to Mr. Ritchie, Mr. McMullen, or any other member of the Government team while undergoing cross-examination.

THE COURT: No. He must expect that if he does, he is fully subject to cross-examination with respect to it.

MR. GILLEN: There was one more thing.

At the last trial Mr. Goberman testified as to certain notes that he had at home, certain credit cards that he had at home.

If your Honor will remember the mental notes that he told Mr. Meiselman that he was looking for. I would ask that he be directed to bring in any and all written notes in connection with this case, to bring in any and all of his alleged credit cards --

MR. RITCHIE: That is not on the subpoena. This is a subpoena that is very extensive.

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THE COURT: Looks like a Government one from here.

MR. MEISELMAN: I prepared the subpoena, your Honor, at the present moment I am not with the Government. Old habits tend to die slowly.

THE COURT: Is this on the Tinker --

MR. GILLEN: Mr. Goldman was served personally with a subpoena and a subpoena duces tecum --

THE COURT: The jury at this point would like to know what the case is about. They have heard enough about Goberman. They are very impatient. They want to get on with it. We have got to find an easier way. If you want to put more of this material in, you have to put it in more quickly. You are boring them to death.

MR. GILLEN: I do not think they are bored, quite frankly.

THE COURT: Why are they yawning?

MR. GILLEN: I saw a lot of them laughing. I do not know whether with me or at me.

THE COURT: No, let's move on. I have other matters.

MR. MEISELMAN: I would make it a point of appearing in Court earlier tomorrow, so I would have an opportunity to look at the records. Can I expect

them tomorrow morning?

MR. RITCHIE: Why don't you come over to my office tonight.

MR. LEONE: Will we be on trial Friday?

THE COURT: Yes, but we may have to start a little later. I am not sure. We might be a quarter of an hour late.

MR. LEONE: Will we be sitting on Monday?

THE COURT: No, I'm afraid it's a legal holiday. If you want to volunteer --

MR. LEONE: No, I need the rest.

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 73-CR-442

JOHN DE LISO, THOMAS MCNAMARA, ALPHONSE MEROLLA and ALPHONSE M. MEROLLA, :

Defendants. :

----------X

United States Courthouse
Brooklyn, New York

October 10, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

HENRY SHAPIRO
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID RITCHIE, ESQ.
-and-
MARSHA KATZ, ESQ.
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RONALD FISCHETTI, ESQ.
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LEONARD J. MEISELMAN, ESQ.
-and-
MICHAEL GILLEN, ESQ.
Attorneys for Defendant Thomas McNamara

MS. MARION SELTZER
LEGAL AID SOCIETY
Attorney for Defendant A.M. Merolla

JOHN LEONE, ESQ.
Attorney for Defendant A. Merolla

Also present:

RICHARD MC MULLEN
Special Agent, Federal Bureau of Investigation

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MR. RITCHIE: In connection with the subpoenas that were issued to Mr. Goberman last night and in connection with the direction of the Court to produce the license, I spoke with Mr. Goberman this morning and he stated that last night he became involved in some important business.

What happened, he telephoned a person he does business with and that individual told him that on Saturday night he was approached by a detective lieutenant from the Suffolk County Police Department who was engaged in allegations that Mr. Goberman was involved in swindling Mr. Benakas.

Mr. Benakas, if your Honor recalls, was brought up during the cross-examination of Mr. Gillen yesterday. The name that was supplied to him by this individual -- I will have Mr. Goberman in to give you the details, if your Honor wishes any further inquiry -- was a Lieutenant Smergo or Schmergo or Schmerl. Mr. Goberman on hearing this telephoned a number of other people that he does business with and did business with in connection with Mr. Benakas and other individuals had also been approached by this detective.

I believe at other times they thought he was

only a detective.

Now, Mr. Goberman then went to the fourth police precinct of Suffolk County and spoke with Detectibe Sergeant Jensen and asked "What's going on?"

This Detective Sergeant Jensen checked the two possible preceincts that would have anything to do with an investigation of Mr. Goberman in this regard and that would have been the second precinct and the fourth precinct of Suffolk County Police Department.

According to Mr. Goberman, Detective Sergeant Jensen, informed him at the -- after speaking with the second precinct and knowing the roster of the fourt precinct that there was no such detective Schmerl.

I raised the possibility to Mr. Goberman that this was perhaps on the initiative of the Suffolk County District Attorney's office, possibly the Fraud's Bureau of some other bureau. That possibility was not checked out.

I do not know whether it was a real law enforcement officer or not. I do not think that is primarily -- should be the concern of the court at this time. I do think in light of this unexpected development, Mr. Goberman was not able to search his

records to come up with this material, and I would ask that the Court supply him with one further day to supply that material.

I have informed him that if your Honor grants that, he will have to make a very concerted effort tonight to find that material.

THE COURT: Perhaps he could furnished with some assistance. We do not want to have to strike his testimony.

MR. RITCHIE: No, we do not.

THE COURT: If he isn't fully cross-examined, that is a defense remedy.

MR. RITCHIE: Yes, your Honor. I realize that.

THE COURT: So he is no easier for you to manage than them.

MR. RITCHIE: I do not try to manage him.

THE COURT: Maybe Mr. McMullen could crank him up.

MR. RITCHIE: Yes, your Honor.

I believe that -- if this wasn't a real police officer that that would be a very upsetting factor --- his not knowing whether it is or isn't.

MR. LEONE: To Mr. Goberman it would be up-

setting?

Did he sleep home last night?

THE COURT: I think Mr. McMullen is the politest law inforcement man he ever dealt with.

MR. RITCHIE: I do not know whether that's the fault of Mr. McMullen or other police officers.

THE COURT: Did he sleep home last night, is the question.

MR. RITCHIE: I do not know.

MR. LEONE: Could we find out if he did, because frankly I am not satisfied with the explanation.

THE COURT: Gentlemen, that's another matter and if the records arenft produced tomorrow, we will deal with it then.

I take it that these telephone calls and visits that he was making were out in Suffolk County, that he did not spend the time in Brooklyn last night?

MR. RITCHIE: He informed me that he was intending to go to Suffolk County. He was catching a train.

THE COURT: Gentlemen, the jury is all here.

MR. GILLEN: How will we handle this as far as the license business?

THE COURT: We are on very collateral issues. He has been raked over the coals on the license already. I take it if for any reason the examination -- the cross-examination and the redirect examination can be completed today, that we will have to instruct him to resume tomorrow when he has the records with him that have been subpoenaed.

MR. RITCHIE: I believe so.

THE COURT: Mr. Ritchie is all in favor of completing the cross today. He'd like to get on with his case.

That's another matter.

(Jury present.)

H A R O L D G O B E R M A N, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: Goodmorning, members of the jury.

MR. GILLAEN: May I?

THE COURT: Yes.

CROSS-EXAMINATION BY

MR. GILLEN (Cont'd):

Q Mr. Goberman, on January 10, 1974, page 648, were you asked these questions and did you give these answers at line 15:

"Question: Did you carry a gun to hijack a truck?

"Answer: Yes, I did.

"Question: Did you stick the gun in the driver's face?

"Answer: Yes, I did.

"Question: And did you tell him you would kill him if he didn't do what you told him?

"Answer: Yes, I did.

"Question: Was the gun loaded?

"Answer: Yes, it was."

Were you asked those questions on January 10, 1974 and did you give those answers?

A Yes, I did.

Q Now Mr. Goberman, you said that on June 5th there came a time when you went to the bank?

A Correct.

Q What time of the day was that?

A Approximately between 2:00 and 2"45.

Q What time did you come back from the bank -- I think you told us you came back to the McNamara's?

A That's correct.

Q What time was that?

A Right after I left the bank, which I would

assume -- not assume, approximately 2:45.

Q Now, where was your brother Allan?

A To the best of my knowledge he was on the corner by the water -- the corner side by the water.

Q By the water where?

A Port Jefferson.

THE COURT: Do you know the street?

THE WITNESS: On the corner of Main Street and I guess -- I think it is 25 A, it goes up to Setauket. That would be on the west side.

Q Did you meet with Allan then when you came back from the bank?

A I do not recall.

Q You told us that you went for a drink?

A Correct.

Q Did Allan go with you?

A No sir, he did not.

Q Who went with you for a drink?

A I do not know if he went me or I met him at the bar, Del Matro Fence Contractor.

Q Where was Allan when you went to the bar?

A I do not recall.

Q How long were you in the bar?

A I would assume anywhere from 15 minutes to

half an hour.

Q What's your best recollection as to the length of time that you say you were in the bar?

A That is the best of my recollection.

Q What did you do then?

A From there I went back to Len Al's office.

Q When is the last time you saw this contractor, Del Mastro?

A Correct.

Q When was the last time you saw him?

A A couple of months ago.

Q How many months ago to the best of your recollection?

MR. RITCHIE: Objection, beyond the scope --

THE COURT: Yes, we are getting awfully far afield.

Q Now, on January 8, 1974 were you asked these questions and did you give these answers at page 304, line 11 --

MR. RITCHIE: Could you hold it for a second?

(Pause.)

THE COURT: There is another copy of that transcript up here.

MR. GILLEN: 304, line 10.

"Question: Was your check cashed at the bank?

"Answer I do not know.

"Question: What happened next?

"Answer: I had gotten back in the car with Alphonse Merolla and John De Liso and taken back to the McNamara's and left off.

"Question: What if anything did you do on that day and that time?

"Answer: At that time I got hold of my brother and we went back to Happauge."

Were you asked those questions and did you give those answers?

THE WITNESS: That is correct.

Q On June 8, 1974 did you give the testimony that you gave here about going to a bar?

MR. RITCHIE: Your Honor, June 8, 1974?

MR. GILLEN: I am sorry, January 8, 1974.

(Cont'd on next page.)

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CROSS-EXAMINATION

BY MR. GILLEN: (Cont.)

Q Did you?

A No, sir, I didn't.

Q Had you forgotten?

A I was only reminded of it a couple of months ago when I seen the contractor.

Q I see.

On January 10th, 1974, page 669, Mr. Ritchie -- were you asked these questions and did you give these answers: Listen:

"Question: On June 5th, 1972 did you have a drink with anybody after you left the McNamara's?

"Answer: I do not remember, sir.

"Question: Is there a bar across the way called Dino's?

"Answer: Yes, there is, sir.

"Question: Have you ever been there?

"Answer: Yes, I have.

"Question: Were you in there on June 5th, 1972?

"Answer: I do not remember, sir."

Were you asked those questions and did you give those answers?

MR. RITCHIE: Objection, there is no

inconsistency shown.

THE COURT: That is for the jury to say, Mr. Ritchie.

MR. RITCHIE: Yes, your Honor.

MR. GILLEN: Thank you.

BY MR. GILLEN:

Q Mr. Goberman, ever in a mental institution?

A No, I was -- No, I was not.

Q Are you sure about that?

A That is correct.

Q Ever in Kings County Psychiatric Ward?

A Yes, I was.

Q Is that a mental institution?

A No, I was not. It was for an examination.

Q As a matter of fact, didn't you claim that you were insane in order to avoid a court date?

A Correct.

Q Did they find you sane, Mr. Goberman?

A Yes, they did.

Q But you fooled them to get in ; is that right?

A I do not quite understand what you mean, "fooled them".

THE COURT: No, see he wouldn't know what went on in the mind of whoever it is that acted upon his

representation or whether the person who acted on the representation was free to ignore it on the ground of a personal disbelief.

BY MR. GILLEN:

Q Did you tell anyone that you talked to and they talked to with you?

A No, sir, I did not.

Q Did you tell anyone that you heard voices?

A No, sir, I did not.

Q How long were you in the psychiatric ward?

THE COURT: He has said that this was an examination --

MR. GILLEN: I see.

THE COURT: -- facility and not a place for the commitment of the unbalanced.

BY MR. GILLEN:

Q How long were you in this examination place?

A To the best of my knowledge, anywhere between 15 to 30 days.

Q Did you talk to a psychiatrist while you were there?

A Yes, I did.

Q Didn't you tell the psychiatrist the truth?

MR. RITCHIE: Objection, it calls for a

confidential communication.

MR. GILLEN: It was published in court. I don't understand.

THE COURT: Well --

MR. GILLEN: I will go on.

BY MR. GILLEN:

Q But you did this to avoid a court appearance; isn't that right?

A That is correct.

Q You fooled the judge, or you were trying to fool the judge?

A No, sir, I did not.

Q You weren't trying to fool the Judge?

A No, sir.

Q Who were you trying to fool?

A Who was I? Nobody.

Q Were you insane?

A No, sir.

Q Have you ever gone to Kings County Hospital before for 15 to 30-day stay?

A No, sir.

Q Would you tell us why then that you went to Kings County Hospital for 15 to 30 days?

A I think you just mentioned it, for psychiatric

examination.

Q Who initiated the psychiatrict examination?

THE COURT: I think we have been all over that.

MR. GILLEN: Fine.

Q Now, you told us about on June 5th, according to you, you went to McNamara Buick on that date, right?

A That's correct.

Q What time, June 5th?

A Approximately 9:00 a.m. in the morning.

Q On June 5th?

A That is the construction site itself, at 9:00 a.m..

Q Didn't there come a time you said you went with your brother Allan to McNamara Buick in Port Jefferson, the old building?

A Correct.

Q What time was that?

A Approximately between 1:30 and 2:00 o'clock.

Q What time did you leave?

A Approximately between 2:00 and 2:45.

Q How long were you there at McNamara Buick?

A Approximately around half an hour.

THE COURT: One-half hour?

THE WITNESS: That's correct, your Honor.

Q You say you met John McNamara on that date; is that correct?

A That's correct.

Q How long were you in John McNamara's company?

A I would say -- you mean in his company -- in the office of the McNamaras',upstairs?

THE COURT: What Mr. Gillen is asking you: How long were you in the presence of John McNamara on that date -- you mean at the afternoon visit?

MR. GILLEN: Yes, sir.

THE WITNESS: I would say from when I arrived at the office which is approximately between 1:30 and 2:00, up until the time I had come back from the bank which is approximately 2:45.

BY MR. GILLEN:

Q How long were you in this room that you described as Tom McNamara's office?

A To the best of my recollection --

THE COURT: Tom McNamara?

MR. GILLEN: I believe he described it as Tom McNamara's office.

THE WITNESS: Correct.

Q How long were you there?

A Anywhere from 15 minutee to a half hour.

Q How long was your brother Alan in the room if he was ever in the room?

A I'd say of a total time in the room, anywhere from five to ten minutes.

Q Did you have any discussion with John McNamara on that date about the job site -- about what was going on at the job?

A I do not recall, sir.

Q Did your brother Alan discuss the job that was going up -- the building on Nesconset Boulevard with you and John McNamara on that date?

A To the best of my knowledge there was some type of conversation. I do not recall what it was.

Q Was your brother engaged in the conversation?

A For a couple of minutes, to my knowledge, he was.

Q Was this before or after you say you were beaten?

A After the beating.

Q Was this before or after you say you signed a registration -- a trailer registration?

A I cannot recall if it was before or after the signing of the trailer registration.

Q Was it before or after this check that you signed for $1300?

A I do not recall if it was before or after the signing of the check.

Q Was your brother Alan present when you signed, as you say, this trailer registration?

A I do not recall, sir.

Q Was your brother Alan present when you signed this $1300 check?

A I do not recall, sir.

Q Have you been in business with your brother Alan?

A Yes, I have.

Q When did you go into business with your brother Alan?

A Late 50's, early 60's.

Q Still in business with your brother Alan?

A No, sir, I am not.

Q Do you see him?

A Occasionally.

Q When was the last time you saw your brotner Alan?

A Anywhere from one to two months ago.

Q Where did you see him?

A I do not recall where it was.

Q What is your best recollection, the last time you saw your brother Alan?

A As I had said,one to two months ago.

Q Today is October 9th, 1974 -- correct -- October 10th, I am sorry.

A That's correct.

Q Did you see him last week?

THE COURT: He said a month or two ago.

MR. GILLEN: A month or two.

Q Are there judgments against you and your brother Alan?

A I do not know, sir.

Q Do you and your brother Alan owe people money?

A I do not think so, sir.

Q You are not sure?

A That is correct.

Q But you and he were in business together?

A This was better than ten years -- 13, 14, maybe.

Q You say it's ten or 14 years ago, correct?

MR. RITCHIE: Objection, argumentative.

THE COURT: Is that exactly what he said?

MR. GILLEN: Yes, sir. I wasn't sure.

Q Now, was there anybody talking on the telephone in Tom McNamara's office during this period of time that you described on June 5th, 1972?

A I do not know, sir.

Q Well, when you were getting beat up, was anybody on the telephone?

A When you are getting beat up I don't think you know what is really happening at all. I was not interested.

(continued next page.)

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CROSS-EXAMINATION

BY MR. GILLEN (Cont'd):

Q When you were -- weren't getting beat up, was anyone on the telephone?

A I do not know, sir.

Q Ever hear a man by the name of A-i-o-s-a?

A Yes, I have.

Q He is a plumbing contractor?

A Yes, sir.

Q And he did work on the job; is that correct?

A Correct.

Q Isn't it a fact that John McNamara in your presence called Mr. Aiosa on June 5th?

A I do not know as I said before.

Q And isn't it a fact that you gold John McNamara on June 5th that you had paid Mr. Aiosa; isn't that right?

A I do not know, sir.

Q Isn't it a fact that John McNamara in your presence called Mr. Aiosa and tried to get you to the telephone with Mr. Aiosa and you refused to get on the telephone?

A As I said, I do not know.

Q Isn't it a fact that Mr. Aiosa said that you hadn't paid him and you were saying that you had, and you refused to get on the phone?

MR. RITCHIE: Objection, and it calls for hearsay and obviously --

THE COURT: No, no. He is just asking him whether or not these things happened in his presence.

Now, there is no evidence before the Jury on the question of whether Mr. Aiosa was or was not paid. We are simply talking here --

MR. RITCHIE: Your Honor, I did object --

THE COURT: -- about the words used on this occasion and whether there was any occasion on which Mr. John McNamara called a Mr. Aiosa on the telephone and asked Mr. Goberman to speak to Mr. Aiosa and he declined. That's what we are after.

MR. RITCHIE: It's also beyond the witness's -- beyond the possibility of his knowledge --

THE COURT: As to what Aiosa said on the phone?

MR. RITCHIE: Yes.

THE COURT: You are quite right.

BY MR. GILLEN:

Q As a matter of fact, didn't your brother Allen engaged in that telephone conversation for a period of 10 or 15 minutes?

A As I said, sir, I do not know.

Q You told us that you were in the room 15 minutes

Goberman - cross - Gillen

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to a half hour; is that correct?

A Correct.

Q I am asking you: was there a twenty-minute phone call with Alosa?

A I would seriously doubt that.

Q Was there a phone call with anybody?

A I do not know, sir.

Q But you were in this room -- it's a small room, isn't that right?

A Correct.

Q And your brother Allen was in the room; right?

A Correct.

Q And you don't recall whether or not there was a long conversation with John McNamara and a long conversation on the telephone in which your brother Allen was involved?

A I just finished getting a beating and I wasn't interested in anything but to get out of there.

Q And you did get right out of there; right?

A I would say within 10 minutes thereafter, yes.

Q In that 10 minutes, was there a conversation with your brother that he was on the telephone?

A As I said before, sir, I do not know.

Q Well, is it that you don't know or you don't recall because you told us that you were there?

A That is correct, sir, and I said before, I do not know.

Q You mean it could have happened but you don't know about it?

A About the phone conversation.

Q Yes.

A That's correct.

Q A phone conversation some 15 minutes on June 5, 1972.

A I do not know of any phone conversation.

Q Now, you said that John McNamara told someone to get a check; is that right?

THE COURT: Check form.

Q Check form on June 5, 1972; right?

A Correct.

Q Who did he tell?

A I do not know.

Q Was it a man or a woman?

A I do not know.

Q Did someone bring a check in?

A I do not know -- remember how that check got into the room.

Q Dodn't you tell us that you remember everything about these dates, June 5th to June 28th?

A That's correct, sir.

Q How much money did you have in the bank on June 5, 1972?

A Approximately $4,000.

Q How much money do you say you told these people in the room that you had in the bank?

MR. RITCHIE: Objection.

A One thousand --

MR. RITCHIE: I will withdraw the objection.

A $1,400.

Q And you were in fear at this time; isn't that right?

A That's correct.

Q And you had been beaten up at this time; isn't that right?

A Yes.

Q Yet you lied to them; correct?

A That's correct.

MR. GILLEN: One moment, please.

THE COURT: Yes.

(Pause.)

Q This man Spatarella that you called on June 5th, did you tell us that he was a racket guy?

A Correct.

THE COURT: A what?

MR. GILLEN: Racket guy, racketeer.

THE WITNESS: Correct.

Q How long did you know him?

A Since approximately 1967 or 1968, when I did his deli.

Q Prior to June 5, 1972, when was the last time you had seen Mr. Spatarella, can you tell us?

A I would say a few days before that.

Q Where did you see him?

A Anywhere from a few days to a few weeks.

Q Where did you see him?

A I do not recall, sir.

Q Was it in Brooklyn, in Nassau, was it in Suffolk?

A It would have to be in Suffolk.

Q Was it on the job site?

A I do not recall.

Q Was he ever on the job site?

A I do not recall, sir. I called his office to deliver a container -- He supplies most of the construction containers on the island.

Q Delivery of what?

A Refuse container. 40-yard roll-offs --

Q He was in the private garbage collection?

A And the roll-off -- he supplied every major contractor on the island.

Q Are you still friendly with him?

A I don't say that I have ever been really friendly with him in quite a few years.

Q Where is he now? When was the last time you saw him?

A I would say approximately a year ago.

Q Didn't you tell Tom McNamara that you got $350 in order to put Sal Spatarella's garbage container on that property?

A Not to my knowledge, sir.

Q Didn't two men come on that job site and you identified them as Sal Spatarella's men to Tom McNamara and said if he didn't pay him for the rest of his life $125, these men would take care of him?

A No, sir, I did not.

MR. GILLEN: May I have this marked for identification?

THE CLERK: Marked for Identification, Defendants' Exhibit M.

(So marked.)

(Continued on next page.)

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CROSS-EXAMINATION

BY MR. GILLEN: (Cont.)

Q Janet McCartney, do you know that name?

A Yes.

Q Isn't it a fact that you told Janet McCartney that you murdered Irving Silver?

A No, sir, it is not.

Q Isn't it a fact that you told Janet McCartney that you hit Irving Silver with a pipe?

A No, sir, it is not.

MR. RITCHIE: Objection.

I ask that that last answer be stricken. I think it goes totally outside the scope of what had been agreed upon, what was read to the jury yesterday. I think Mr. Gillen was aware of that fact, also.

MR. GILLEN: I am not.

THE COURT: He's bound by the answers he will receive.

MR. GILLEN: Yes, sir.

BY MR. GILLEN:

Q I show you N for identification. Do you recognize anybody in that picture?

A Yes, I do.

Q Who do you recognize?

A Mr. Spatarella, Mr. Spatarella's wife, myself and Janet McCartney.

Q What is Janet McCartney?

A Yes, it is.

Q You are not friendly with Janet McCartney any longer, are you?

A I haven't seen her in approximately 17 months.

Q How long did you live with Janet McCartney?

MR. RITCHIE: I must object. I think this is degrading --

THE COURT: It has nothing to do with his ability as a witness.

MR. GILLEN: I offer this photo into evidence, your Honor.

MR. RITCHIE: May I see it, please.

THE COURT: Yes.

MR. RITCHIE: I'd like to know the purpose for which this is being offered.

MR. GILLEN: To identify Mr. Spatarella. We will have other witnesses.

MR. RITCHIE: I would ask that it be cut down your Honor, so that the irrelevant photos contained thereon are deleted.

THE COURT: I think the jury would rather see the whole picture.

MR. RITCHIE: Yes, your Honor.

THE COURT: If any.

THE CLERK: Now, Defendant McNamara's Exhibit N in evidence.

(So marked.)

BY MR. GILLEN:

Q Isn't it a fact that Sal Spatarella was on that job site?

A Not to my knowledge, sir.

Mr. GILLEN: May I display this to the jury, your Honor, the photograph?

THE COURT: Yes.

(Photograph handed to jury.)

Q Where did you get Sal Spatarella's phone number on June 5, 1972?

A I don't recall where I got it from, sir.

Q Did you have it on your person?

A I don't recall, sir. He's listed in the phone book.

Q Did you get it out of the phone book?

A I do not recall, sir.

Q Did you ever have his phone number in one of

these little telephone memo books?

A I would assume I did.

Q What is your best recollection, instead of an assumption, Mr. Goberman?

A I don't have any recollection of it, an assumption.

Q Now, you mentioned a girl by the name of Dotty; is that correct?

A Yes.

Q Is that Dorothea Tomaselli, if you know?

A I don't know.

Q Was it a dark-haired girl?

A I believe so, sir.

Q A youngish girl, maybe in the mid-twenties, early twenties?

A To the best of my knowledge, yes.

Q Did you see her on June 5, 1972 at the McNamara building in Port Jefferson?

A I don't recall, sir.

Q Didn't you mention her in your direct testimony, Mr. Goberman, here yesterday before this jury?

A Yes, I did.

Q But you don't recall now whether you saw her on that day?

A On June 5, that's correct.

Q You mentioned a man by the name of Alex?

A That's correct.

Q Is his name Alex Gniazdowski?

MR. RITCHIE: Objection, your Honor.

MR. GILLEN: If he knows.

MR. RITCHIE: I'd ask that counsel be directed to stand back at the podium.

THE COURT: Would you please, Mr. Gillen.

MR. GILLEN: Yes, your Honor.

BY MR. GILLEN:

Q Alex Gniazdowski, do you recognize that name, sir?

A Yes, sir, I do.

Q Did you see him on June 5?

A I don't recall, sir.

Q Did he notarize a document for you on June 5?

A I don't recall, sir.

Q Did anyone come into that room, other than all these people that you have described?

A I don't know, sir.

Q You were in the room, isn't that a fact?

A Yes, I was in the room.

Q I think you said you were in there 15 to 30

minutes, correct?

A That's correct.

Q During this 15 to 30 minutes, did anybody else come into that room?

A Sir, I said I don't know.

Q You mean -- you've already told us of nine people in the room; correct?

A That's correct.

Q And you don't recall whether there were other people, in addition to these nine people, who'd come into the room?

A That's correct, sir.

Q And this is a place of business, correct?

A That's correct.

Q You mentioned the name Taibbi, is that right?

A That's correct.

Q You mentioned that a resume that Taibbi submitted, that you hired him as a result of the resume; is that correct?

A That's correct.

Q Where's that resume?

A I would not know, sir.

Q Is it with your books and records?

A I would not know, sir.

Q Do you owe Mr. Taibbi any money?

A To my knowledge, no. But to his -- what he has told me, yes.

Q Did you promise Taibbi you would get him another job?

A I don't recall, sir.

Q Didn't you tell him you'd get him a job out in Michigan?

A Not to my knowledge, sir.

Q Now, isn't it a fact, MR. Goberman, that you spit in Tom McNamara's face on that job site on Nesconset Boulevard?

A Would you repeat that, please?

(Record read.)

THE WITNESS: It is not a fact.

(continued next page.)

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CROSS-EXAMINATION (Cont'd.)

BY MR. GILLEN:

Q As a matter of fact that you made a threat that Tom McNamara's sons are going to find their father's face down in the mud?

A That is a lie, sir.

Q As a matter of fact that you threatened to bulldoze Tom McNamara's building?

A That is not a fact, sir.

Q Isn't it a fact that you threatened to kill Tom McNamara?

A That is not so, sir.

Q As a matter of fact that you threatened to push Tom McNamara off the roof of that building?

A No, sir, it is not.

Q Did you ever threaten Thomas McNamara, Mr. Goberman?

A No, sir, I never did.

Q Did you ever threaten anybody on the job site, Mr. Goberman?

A No, sir, I didn't.

Q Didn't you threaten to get a shotgun and clean the whole McNamar family out?

A No, sir, I never did that.

Q Did you have any shotgun, Mr. Goberman?

A No, sir.

Q Just pistols?

A I hadn't owned a pistol in over three years.

Q Did you have a license for this pistol that you owned?

MR. RITCHIE: Objection, your Honor, irrelevant.

THE COURT: Overruled.

A No, I never had a permit for the guns that I have owned.

Q You were known to be armed and dangerous to the police department in Suffolk, is that correct, Mr. Goberman?

MR. RITCHIE: I object, your Honor.

THE COURT: Sustained.

Q You told us on June 28th, there came a time when you again went to the McNamara building in Port Jefferson, correct?

A That's correct.

Q What time was that?

A I arrived there at approximately 10:00 a.m.

Q I think you described some type of an apartment, is that correct?

A That's correct.

Q James McNamara's apartment?

A That is what I was told.

Q That is another son of Tom McNamara?

A That's correct.

Q Do you know how many sons he has?

A No, sir, I don't know.

MR. RITCHIE: Objection, your Honor.

THE COURT: It is answered now, Mr. Ritchie.

Q Ever in that apartment before?

A No, sir, I was not.

Q What time was it that you went into the apartment?

A Approximately 10:00 a.m. in the morning.

Q What time did you leave the apartment?

A Approximately anywhere from 10:45 to 11:30.

Q So you were there about three quarters of an hour to an hour and a half, is that right?

A I would say within approximately an hour, give or take five minutes one way or the other.

Q Were you beaten up for an hour?

A No, sir I was not.

Q Were you beaten up for 45 minutes?

A No, sir, I was not.

Q Were you beaten up for a half hour?

A It was less -- I would say it was in the area of a few minutes.

Q What did you do for the rest of the time that you were there?

A I signed the release and the other document.

Q How long did that take, to put your signature on this release and the other document?

A Less than a minute.

Q Yesterday, October 9, 1974, Page 320, Mr. Ritchie, were you asked this question and did you give this answer, Line 12:

"Question: Now, at the time you were signing these items, was your brother present in the room?

"Answer: To my knowledge, he was present when I signed the registration."

Did you give that answer yesterday?

A That's correct.

Q Today you told us you couldn't recall, is that right?

A That's correct.

Q What did you do for that three quarters of an hour to an hour and a half that you were in James McNamara's apartment, what did you do?

MR. RITCHIE: Objection, your Honor, assumes

facts not in evidence. He has never testified to an hour and a half.

MR. GILLEN: He testified from 10:25 to 11:30, your Honor.

MR. RITCHIE: He testified to an hour, give or take five minutes on either side.

THE COURT: That's right.

MR. GILLEN: That is pretty close to an hour and 45 minutes, to an hour and a half.

MR. RITCHIE: We have added 15 minutes.

BY MR. GILLEN:

Q All right, I will take Mr. Ritchie's --

THE COURT: No, what the witness said, not what Mr. Ritchie said.

Q Didn't you tell us that you got there about -- you got there about 10:00 and you left about 10:45 or 11:30?

A That's correct, sir.

Q Would you agree with me, sir, that is 45 minutes to an hour and a half?

MR. RITCHIE: Objection, your Honor. Argument.

THE COURT: It is.

Q What did you do for all that time, Mr. Goberman?

A Absolutely nothing. I was too scared to do anything.

Q You just sat there for an hour or an hour and a half?

A I said, give or take 15 minutes one way or another on an hour, and after the beating and so forth, I got dressed, a cab was called for me and I did not do absolutely nothing.

Q And did you have any discussions about the release before you signed it during all this period of time?

A What are you referring to, sir?

Q I am referring, did you talk about the job, did you talk about the release before you signed it, during all this period of time that you have told us you were there?

A The biggest wait was after the beating, waiting for a cab.

Q Before you were beaten, there was about 45 minutes to an hour before that, is that right?

A No, sir, there was not.

Q How much time was there?

A I cannot tell you exactly, sir.

Q What is your best recollection?

A Ten, 15 minutes.

Q Was John McNamara there during this 10 or 15 minutes?

A The first 10 or 15 minutes, I do not recall, sir.

Q Did John McNamara beat you up on that day?

A On the last occasion after I was called --

Q After you what?

A After I was told I went to the District Attorney, then everybody threw some punches and so forth.

Q Did John McNamara throw punches on June 28th?

A I cannot honestly remember if he threw a punch on June 28th.

Q Thomas McNamara was there, isn't that right?

A That is correct.

Q Did you discuss with John McNamara, on June 28th, that release, the terms of the release?

A Not to my knowledge, sir.

Q Does that mean you could have discussed it? What does that mean, not to your knowledge?

A After you take a beating, I wasn't interested discussing nothing, I was going to sign whatever I was told to sign.

Q What about before, did you discuss it with John

McNamara before you got beaten?

A I do not recall, sir.

Q You mean you could have spoken to him about the release, but you just don't remember now?

A It is possible, sir.

Q Didn't you tell us that you remembered everything about these days?

A That is correct, sir.

Q But that you forgot, right?

A Not that I forgot, sir, I do not recall.

Q This girl Dotty, was she there on June 28th?

A Yes, she was.

Q Did she beat you up, too?

A No, sir, she did not.

Q When was she there, Dotty?

A When the release and the other document was brought in.

Q Who brought it in?

A John McNamara, Dotty and Alex Gniazdowski.

Q And this is right after you were beaten up?

A That is correct.

Q Did John McNamara -- was he in the room when you were beaten up?

A The first time, I do not know.

Q Didn't you tell us on your direct examination that John McNamara was there when you were beaten up?

A That is correct. There were two incidents.

Q Anybody else come into that room?

A Not to my knowledge.

Q Are you sure about that?

A That is correct, sir.

Q You can't remember anybody else coming into that room, is that correct?

A That is correct.

Q What about Mr. Gniazdowski, did he come into that room?

A I believe he did, sir.

Q At what point, were you still being beaten up?

A No, sir.

Q Did Alex beat you up?

A No, sir.

Q Were you disrobed at this time?

MR. RITCHIE: I would ask that counsel be directed to stay back at the podium.

THE COURT: Would you please, Mr. Gillen.

MR. GILLEN: I will ask the same thing of Mr. Ritchie.

Q How long were you in the room before Dotty came

in the room?

A I would assume somewhere in the area of about 15 minutes.

Q How long were you in the room before Alex came into the room?

A Also the same length of time.

Q Will you describe that room for us.

A It looks like a living room, and it is the first room as you enter the apartment.

Q Were there office machines in that room?

A I do not know, sir.

Q Do you know what a calculator looks like?

A Yes, I sir, I do.

Q Do you know what a typewriter looks like?

A Yes, sir, I do.

Q Were either of those items in that room?

A I do not know, sir.

Q Were there any file cabinets in that room?

A I don't remember seeing any.

Q Was there a desk in that room?

A I don't know, sir.

Q What did John McNamara say to you on June 28th, at any time during your conversation, what did he say?

A I do not recall, sir.

Q Did he say anything to you at all, John McNamara?

A I do not recall, sir.

Q You don't recall any conversations at all with John McNamara on June 28th; is that right?

A That is correct.

Q Did you demand $65,000 on June 28th from John McNamara?

A No, sir, I did not.

Q Isn't it a fact that you bargained with John McNamara and the figure of $25,000 was agreed upon?

A No, sir, I did not.

Q Did John McNamara offer you the $25,000?

A I was offered $25,000, yes.

Q Did John McNamara offer you the $25,000?

A I do not recall who had offered me the 25,000. I was told I was getting 25,000, sign the release and get off the job.

Q Isn't it a fact that John McNamara counted that money out in front of you, Mr. Goberman?

A No, sir, it is not a fact. I had never seen the money --

MR. GILLEN: Your Honor, at this point, sir, referring to the bill of particulars --

MR. RITCHIE: Could we have this at sidebar?

THE COURT: Concerning the --

MR. GILLEN: The bill of particulars, the tender

MR. RITCHIE: Can we have this at sidebar?

THE COURT: Yes.

(Sidebar discussion.)

MR. GILLEN: I know we brought it up yesterday, your Honor, but I want to bring it up in the proper place.

Mr. Ritchie served me a formal bill of particulars wherein he claimed that the Government would claim at trial there was a tender of the $25,000.

To me a tender is an in-hand offer --

THE COURT: That's what he said in the bill of particulars. Is that right?

MR. RITCHIE: Yes, your Honor.

THE COURT: And it is in the indictment?

MR. RITCHIE: I don't think it appears in the indictment.

THE COURT: This is where it comes up.

MR. RITCHIE: Yes, your Honor. The recitation of consideration when you take a contract --

THE COURT: It doesn't say for a recited consideration of $25,000 which was not however paid.

I don't what if anything the Grand Jury on that was, can you remember?

MR. RITCHIE: The only testimony we had to that effect would have come from Harold Goberman, your Honor.

His testimony was that he was told he would get $25,000 but that he never got $25,000.

I don't think there was any testimony as to its being counted out or not being counted out.

MR. WEISELMAN: Mr. Ritchie read that indictment to the jury, your Honor, and I believe you did, too. It so states --

THE COURT: I think it is simply a question of whether we do or we don't have a material variance here.

The first question is, is there a variance at all? And the second one is whether it is a material variance.

I confess that I thought about this during the first trial and thought that if there was a variance it was a variance which operated in favor of the strength of the indictment rather than to weaken it.

Had the $25,000 been paid, there wouldn't have been the series of transactions -- had it not been paid.

in a way you can say that Item 3 of Paragraph 4 has not been overproved rather than materially departed from.

I don't think you can use that as an admission on the part of the Government. That was their position in the indictment. They have failed to prove that $25,000 was paid and that's it.

MR. GILLEN: I will just make my objection. I wanted to do it at the proper time.

THE COURT: I think you can bring it out, emphasize it, and refer to the bill of particulars and that's it.

It isn't something where his credibility is undermined, nor does it undermine the credibility of the United States, which is not in issue.

MR. MEISELMAN: What brought it to my mind is that I have a great deal of respect for the Government's office; that if they use that information in the indictment and use that information in the bill of particulars, there was a basis for it and it was the basis --

THE COURT: That is part of his Brady application. That's why I asked about the Grand Jury minutes.

If you gentlemen consult the Grand Jury minutes I think it will be apparent that there was no testimony

before the Grand Jury -- as I understand Mr. Ritchie, and I think I would have heard about it if it was any different -- there was no testimony before the Grand Jury that really supported that allegation as an allegation for payment or tender. Tender? No. Not technically a tender; not a correct use of the term.

MR. GILLEN: Thank you, your Honor.

(Continued on next page.)

Goberman-cross/Gillen

HS:jm
T3amR1

Q Could you tell us please -- I show you Government's Exhibit 15. Tell us please who is that check made out to?

A Thomas McNamara.

Q Who told you to put the name Thomas McNamara on there?

A Mr. McNamara had said he wanted the check made out to himself. It was brought into the room and I made it out.

Q This is the check that was beaten out of you, he wanted the check made out to himself with his name on it?

A Correct.

Q Would you turn it over, please, and tell the ladies and gentlemen who endorsed that check?

THE COURT: Whose name appears on it.

MR. GILLEN: Yes.

THE COURT: As an endorser.

MR. GILLEN: Yes.

A Looks like Thomas McNamara and John McNamara and PU, whatever that means.

Q Is that the same John McNamara, if you know, who you say was present when you were beaten up and that check was beaten out of you?

MR. RITCHIE: I would ask that counsel stand back, please.

MR. GILLEN: I have the checks --

MR. LEONE: Your Honor --

A I cannot tell who signed the check.

Q You said that John McNamara went to the bank?

A Correct.

I said I did not see what had happened in the rear of the bank.

Q This check here, who is Kenneth Hawker?

A I could not tell you that. It was someone who worked on the job.

Q Who is Joan Hawker?

A I do not know.

Q The back of this check you have made out -- is that your handwriting?

(Document shown to witness.)

A Correct.

Q You do that on all your checks, put down the name and the hours someone works?

A If it is for one day, yes I would.

Q You have no recollection who Joan Hawker is; is that correct?

MR. RITCHIE: Objection, it has been asked and answered.

THE COURT: I believe he answered that.

MR. GILLEN: Yes.

Q May I ask you this:

On June 5th, did you ask for any money?

A I said I was behind on the requisitions and I did ask for money.

Q On June 28th, did you ask for twenty-five thousand dollars?

A No, I did not.

Q Did you need it?

A No, sir, I did not --

Q Because you were scared?

A It had nothing to do with being scared. How can anyone in the world miss twenty-five thousand dollars --

Q Did you ask for the twenty-five thousand dollars? You say you didn't?

A Correct.

Q Is that because you were scared?

A It had nothing to do with being scared.

Q Why didn't you ask for the twenty-five thousand dollars?

A All I was worried at that particular time was staying alive.

Q Then you were scared, right?

A That is correct.

Q Were you scared when you were protecting whoever you said it was against shylocks up in the Bronx and you had the shoot-outs, were you scared then?

A It is fourteen years ago and I would not recall at the present time.

Q You said your clothes were taken off on the 28th?

A Correct, sir.

Q All of them?

A That is correct, sir.

Q So you were stripped naked?

A Correct, sir.

Q That doctor that you say you went to, did you pay him?

A Yes, sir.

Q How did you pay him?

A Cash.

Q How much?

A I don't recall the amount.

Q Your best recollection as to the amount?

A I do not know, sir.

MR. GILLEN: May I have a moment to check through my notes?

THE COURT: Yes.

(Pause.)

MR. GILLEN: May I have this marked for identification?

THE CLERK: Marked for identification as Defendant McNamara's Exhibit O.

BY MR. GILLEN:

Q I show you Exhibit O. Would you take the papers out of there, Mr. Goberman.

(Document handed to witness.)

Your picture in that?

A Yes, it is.

MR. RITCHIE: Your Honor, I am going to object to this. I think it is inflammatory.

THE COURT: I have no idea what it is.

MR. RITCHIE: It can be seen by the jury. It may not be able to be seen by your Honor at the present time.

(Document shown to Court.)

THE COURT: It may be received.

MR. GILLEN: Thank you.

I will offer it. I had not offered it, but I will now.

MR. RITCHIE: Is it being offered?

MR. GILLEN: Yes.

MR. RITCHIE: There has been no testimony as to

it whatever.

THE COURT: I believe there has been.

MR. RITCHIE: I don't believe there has.

MR. GILLEN: I do not think Mr. Ritchie really knows what it is. I think he has been thrown off because of this (indicating).

It is not an arrest.

I think Mr. Ritchie, because of this, thought it was something else.

THE COURT: Yes.

MR. RITCHIE: I am sorry, I jumped the gun.

THE COURT: I should say that you had every reason to. My heart skipped a beat.

MR. GILLEN: That is why assumptions are dangerous.

THE COURT: Oh, yes.

MR. RITCHIE: Your Honor, I would object to the admissibility of this. He has already testified to this. He admitted to having used the name other than his own name in this application. I do not think this adds anything to it.

THE COURT: I do not think it does much, Mr. Ritchie, but I think he is entitled to show it.

MR. GILLEN: It is a statement under oath.

THE COURT: It is a statement made in the light of what is printed on the form.

MR. GILLEN: I know.

It is a notarized statement under oath.

THE COURT: Is it notarized?

MR. GILLEN: Yes.

MR. RITCHIE: May I have one question on the voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. RITCHIE:

Q Do you recall filling out this card at the time that you applied for that license?

A Yes, I do.

Q Are those your fingerprints?

A Yes.

MR. LEONE: Could counsel stand back at the appropriate place?

MR. RITCHIE: Yes, I should.

THE COURT: You see, members of the jury, tit for tat goes all the way from the schoolyard up until middle manhood.

Proceed.

(continued on next page)

Q Those are your fingerprints, are they not?

A Correct.

Q And you didn't use the same name, but those are your fingerprints?

A That is correct.

MR. RITCHIE: Your Honor, I object to its admissibility -- I do not think it is relevant, but I won't object to its admissibility.

THE COURT: It is part and parcel of it and it shows what it shows.

MR. RITCHIE: Yes, your Honor.

THE CLERK: Now Defendant McNamara's Exhibit O in evidence.

CROSS-EXAMINATION

BY MR. GILLEN (continued):

Q I show you a portion of Exhibit O. Is that your photograph on here, Mr. Goberman?

A Yes, it is.

Q Did you sign that document?

A Yes, I did.

Q And could you tell us please what name you used?

A Harold Goldman.

Q Is there a question in there, "Have you ever been convicted of a crime?"

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A Yes, there is.

Q Would you read it -- did you answer that question?

A Yes.

Q What did you answer?

A No.

Q Did you sign this statement before a notary public?

A Yes, I did.

Q Did you read here the penalty for falsification: "Falsification of any statement herein is an offense punishable by fine or imprisonment or both."

A Yes, I did.

(continued on next page)

HS:tr
T3/R2

Q You committed a crime when you did that?

A I needed a job and I have two children to feed.

Q Would you commit a crime on this stand to feed your children?

A AS far as signing a paper for a living --

MR. RITCHIE: Objection.

THE COURT: He answered the question.

Q Would you perjure yourself to get two and a half million dollars?

A No sir, I would not.

If I was a thief, I wouldn't need a job.

MR. GILLEN: What? I did not hear that.

MR. LEONE: He said if he was a thief he wouldn't need a job.

MR. GILLEN: Oh.

Q As a matter of fact, these are your fingerprints; is that right?

A Correct.

Q And doesn't it say on here "No criminal record by name and address BCI New York City Police Department"?

A Correct.

Q You didn't give them your right name on here?

A Correct.

Q So they couldn't check it out to find your true criminal record --

MR. RITCHIE: Objection.

THE COURT: That is hardly anything that the witness could know. The objection must be sustained.

Q Why didn't you use your correct name?

A Because due to pressure which I won't say, it's impossible for me to hold a job.

Q Pressures, I see.

Well, why did you use three different names that you told this jury for different jobs?

A I have used Goldman in the last year. That's the only name I used.

Q Didn't you tell us on direct examination you used three names to work in?

A I have said three names to work in in the past year. This is the only name I worked in, excluding my own name.

Q As a matter of fact, you used the name Harry Goldman and you used the name Harold Goldman in connection with your employment.

A One and the same.

On the birth certificate it says Harold and I use Harry.

Q Does it say Harry Goldman?

A No.

Q I am asking you --

THE COURT: He says he does not distinguish between Harold and Harry.

Q But you used -- you used the Harry in one case and you used Harold in another?

A There is no difference between the two first names.

Q Why do you use them as -- at different times?

A Because on my birth certificate it says, "Harold" and everybody knows me -- I am called Harry.

MR. GILLEN: With the Court's permission, I would like to read this to the jury.

MR. RITCHIE: No objection, your Honor.

MR. GILLEN: This exhibit --

THE COURT: Just read it, if you will.

MR. GILLEN: Exhibit O in evidence, an application for an individual license or permit in the name of Harold Goldman -- I won't read it.

I have no further questions of this witness.

THE COURT: We will have a short recess now.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to

decide.

(Jury leaves the court room.)

MR. GILLEN: Your Honor, I have the gentleman from the Consumer's Fraud Bureau. May we make photostats of this? These are official records.

MR. RITCHIE: I have no objection.

THE COURT: Surely, the photographs won't come out very well.

MR. RITCHIE: I did not want to raise this in the presence of the jury.

I would like to note to the Court that throughout the testimony of Harold Goberman defense counsel have made very audible their reactions.

THE COURT: Who did?

MR. RITCHIE: Mr. Fischetti, Mr. Leone.

M R. LEONE: You called it tit for tat. I was trying to bring out a point. I don't care where Mr. Ritchie stands in the court room. I think he has been picayune throughout the trial and is getting away with it.

On several occasions Mr. Ritchie and the FBI agent and their associate had been talking in a manner the jury has been hearing and I have been watching.

Mr. Ritchie hears one or two words that may have been spoken and is making an issue out of it.

I asked the Court to tell Mr. Ritchie to stand back to try and bring that out. He is doing more than he should be allowed to do at this trial. He should not complain.

MR. RITCHIE: I am not going to argue. I will try in the future not to.

THE COURT: Counsel should not discuss things among one another at counsel table where there is a substantial risk that the jury will overhear.

There are certain necessary discussions that must pass between counsel during the examination, but these should be handled certainly at the level of inaudibility, if at all feasible. If it isn't, then call for a recess. That applies to both sides, of course.

MR. LEONE: Their table is much closer than ours.

THE COURT: That means that they have to talk lower.

They can safely do so, since there is only two lawyers, and when Mr. McMullen is in the court room there are three.

MR. LEONE: Not to belabor the point --

THE COURT: Now look, I told you yesterday that I think we are taking too long to get before the jury things that no doubt belong before the jury.

They not only lose their impact, but they lose us an awful lot of time and jeopardise the jury's attention when they are done repetitiously or done in a slow manner which I am afraid doesn't always please juries who like to see things done quickly.

MR. FISCHETTI: May I say this in that regard: It has been my practice during this trial and the prior one -- your Honor may have observed -- where I attempt to assist Mr. Gillen in cross-examination, taking areas from my cross-examination --- I may have very little or none at all -- on those occasions I may have spoken to Mr. Gillen.

I do not think I have said anything that the jury may have overheard, other than giving Mr. Gillen testimony or pointing out an incident.

If that is what Mr. Ritchie is saying --

THE COURT: I do not think he said anything about any particular person.

MR. FISCHETTI: He mentioned myself.

MR. RITCHIE: I only mentioned individuals because your Honor asked me to specify.

THE COURT: All right, gentlemen.

(Recess taken.)

(Cont'd on next page.)

BS:tr T4/R1



H A R O L D G O B E R M A N, resumed the stand and testified further as follows:

(Jury Present.)

CROSS-EXAMINATION BY

MR. MEISELMAN:

Q Mr. Goberman, did there come a time when negotiations were entered into for the construction of the building in question?

A Yes, there did come a time.

Q And did you negotiate for this building in your name or in some other name?

A The first three months I negotiated for Len Al, and then after that I was asked if I wanted to do it on my own, and I negotiated the balance of it on my own.

Q Did there come a time when you submitted a bid for this job?

A Yes, there was.

Q In whose name did you submit the bid?

A In my own.

THE COURT: Your individual name?

THE WITNESS: That is correct, your Honor.

MR. MEISELMAN: May we have this marked, please?

THE CLERK: Defendant McNamara Exhibit P

marked for identification.

(So marked.)

BY MR. MEISELMAN:

Q I show you a paper, Mr. Goberman, and I ask you whether there is a signature thereon?

A Yes, there is.

Q Is it your signature?

A Yes, it is.

MR. MEISELMAN: I move to introduce, your Honor.

MR. RITCHIE: May I see it?

MR. MEISELMAN: Yes, (handing to court.)

MR. RITCHIE: May I have a voir dire, your Honor?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MR. RITCHIE:

Q Is that your signature?

THE COURT: He said yes.

A Yes, it is.

Q Is that a letter that you wrote?

A Yes.

Q It is to whom?

A Pardon me?

Q It is to whom?

A Mr. Thomas McNamara Buick-Pontiac, Inc., 102 Main Street, Port Jefferson, New York.

Q At the time you wrote it who were you working for?

MR. MEISELMAN: I object, your Honor.

THE COURT: Overruled. Let's get this over with, please.

A Mr. McNamara asked me to submit this letter --

THE COURT: For whom were you then working?

THE WITNESS: I do not recall if I was -- still on Len Al's payroll, but I do not think. I think I left there in January.

Q At the time you wrote that did you have a letterhead of your own?

A No sir, that is why I -- I was asked to submit this by Mr. McNamara on Len Al's letterhead so that --

MR. MEISELMAN: I move to strike. The question is objectionable and the answer is not responsive. This is a voir dire as to the authenticity of the document.

THE COURT: Let us get through this material. It is far removed from the case.

I draw your attention to the allegation in

paragraph 2 of the indictment.

MR. RITCHIE: I have no further questions, your Honor. I will not object to the admission.

THE COURT: Received.

THE CLERK: Defendant McNamara's P in evidence.

(So marked.)

MR. MEISELMAN: May I read it to the jury, your Honor?

THE COURT: Quickly.

MR. MEISELMAN: Letterhead, Len Al Construction Co., Inc., General Department Engineering. I am not reading the address and phone number.

"February 4, 1972.

"Mr. Thomas McNamara, Buick-Pontiac, Inc., 201 Main Street, Fort Jefferson, New York.

"Dear Mr. McNamara:

"We propose to construct the automobile sales and service center for McNamara Buick-Pontiac, Inc. of Fort Jefferson, New York, according to the plans and specifications of Becker and Arelt, for the total sum of $382,000.

"Respectfully, H. Goberman," signed "H. Goberman."

Q Did you obtain estimates for this job in the name of Len Al?

A I do not recall if it was in my own name or Len Al.

MR. MEISELMAN: May we have this marked, please?

THE CLERK: Marked for identification, Defendant McNamara's Exhibit Q.

(So marked.)

Q I show you defendant's Exhibit Q and ask you if it refreshes your recollection.

A Yes, it does.

Q You did accept bids in the name of Len Al for this job?

A Because --

Q Not "because..."

Sir, did you or didn't you?

THE COURT: Let's not get ahead of it.

Q Did you, sir, yes or no.

A I went to Len Al's office and everybody knew --

MR. MEISELMAN: I move to strike.

THE COURT: Stricken.

MR. RITCHIE: I ask that counsel stand back.

MR. MEISELMAN: I am going to show him a paper --

MR. RITCHIE: Then I would --

THE COURT: Please stop this. Move ahead.

Q You accepted bids for this job in the name of Len Al?

A Yes, I did.

MR. MEISELMAN: I offer it in evidence.

MR. RITCHIE: His recollection has been refreshed. Thereis no need for this.

THE COURT: Received. Come on!

THE CLERK: Now Defendant's McNamara's Exhibit Q in evidence.

(So marked.)

Q Did Len Al do work on this job?

A Yes, they did, sir.

Q Did you in January 1974 while you were under oath, were you asked this question and did you give this answer, page 266, line 7:

"Question: Did Len Al do any work?

"Answer: They did not."

A That is correct, sir. They did work in the respect that I borrowed their machinas --

MR. MEISELMAN: I move to strike.

May th e witness be instructed not to volunteer?

THE COURT: Yes, please. Answer just the

questions you are asked, Mr. Goberman.

THE WITNESS: Yes, your Honor.

Q You don't remember if this contract was assigned or not, do you?

A Yes, I do remember.

Q On November 27, 1973 while you were under oath were you asked this question and did you give this answer:

"Question: Now, you do know that it was assigned, do you not?

"Answer: I do not remember."

Were you asked that question and did you give that answer?

MR. RITCHIE: Objection, your Honor. He remembers now. He didn't remember at that time.

There is no inconsistency shown.

THE COURT: Would you answer the question, please?

A Since that date I've checked --

Q Were you asked that question and did you give that answer?

A Since that date --

MR. MEISELMAN: Please. I move to strike, your Honor.

May the witness be instructed to answer?

THE COURT: Please answer the question. Let us get ahead with this.

THE WITNESS: Yes, I did give that answer.

Q Thank you. Now, I believe you testified, and if I am wrong please correct me, that the time you started this job was sometime in February of '72 and the last day you did anything on the job was June 28th?

A That is correct.

Q Is that right?

A That is correct.

Q There is no doubt in your mind?

THE COURT: He has answered. Please move on.

Q Tell me something, Mr. Goberman, were there any materials that you had ordered and which were manufactured, which had not been delivered to the job by June 28th?

A Yes, there was.

MR. MEISELMAN: May I have this marked, please?

THE CLERK: Document marked for identification Defendant McNamara's Exhibit R.

(So marked.)

Q I show you, sir, Defendant's Exhibit R and I ask you, sir, if your signature is on it.

THE COURT: Is that your signature, Mr. Goberman?

THE WITNESS: Yes, it is my signature.

THE COURT: Next question.

MR. MEISELMAN: I offer it in evidence, your Honor.

MR. RITCHIE: May I see it, your Honor?

THE COURT: Absolutely.

MR. RITCHIE: Your Honor, I would object to the admission of this on the grounds that it is not relevant at all in this case.

Your Honor specifically ruled on these questions before.

THE COURT: I take it it is for the sentence at about the middle of the page?

MR. MEISELMAN: And further down, your Honor, under the rider.

May I show it to your Honor?

THE COURT: Just tell me.

MR. MEISELMAN: With reference to item number 6.

THE COURT: The date of that is September, is it?

MR. MEISELMAN: Yes sir.

THE COURT: Your question had been?

MR. MEISELMAN: My questions were three in nature: Where the material had been delivered and not delivered; the date of beginning and date of ending.

THE COURT: It may be received.

THE CLERK: Defendant's McNamara's Exhibit R in evidence.

(So marked.)

(Cont'd on next page.)

CROSS-EXAMINATION

BY MR. MEISELMAN:

Q In this paper, Mr. Goberman, you signed it and you swore to it under oath, did you not?

A Sir, when those paper --

Q Did you not?

THE COURT: Please answer the question.

A Yes, I did, but I did not see it. My lawyers made it out.

MR. MEISELMAN: Move to strike.

THE COURT: Granted.

Q Now, sir, I call your attention to Item 4 and do the words appear there, "The material actually manufactured for but not delivered to the real property as none."

A It says the material furnished --

Q Does it say that or not, sir?

A I am reading Line 4. The materia's furnished was all materials necessary for said construction.

Q What is the next line?

A The material actually manufactured but not delivered on the real property as none.

Q Thank you. Did you state under oath on September 14, '72, that the first time that you or Harmac Contractors had ever performed any work on this job was March 5, 1972?

A That is correct, sir.

Q Did you not state under oath on September 14, 1972, that the last time you performed work on this job was July 6, 1972?

A Where is that stated, sir?

Q I call your attention, sir, to Item 6.

A That is correct, sir.

Q Was that true?

A No, sir, it was not.

Q So you lied under oath?

A Sir --

Q Did you or did you not?

A I did not know the dates at that time.

Q You mean you know the dates better now than in September of '72?

A The lawyer made it out and I signed it. When a lawyer makes something out, you don't question his knowledge.

Q You just don't read it?

A That is correct.

Q Although you have sworn to it?

A I assumed he knew the fact when I was asked to sign it.

Q Where did he get the fact fro other than you,

if you know?

A I don't honestly know.

Q You gave him your records and he got it from that, as far as you know?

A That is right but the records were not complete.

Q Did you read this before you signed it?

A No, sir.

Q You just swore to it because someone put it under your face?

A It was my attorney and I do trust my attorney.

Q I see. Now, sir, did you know the defendants Merolla before June 5, 1972?

A No, sir, I did not.

Q On September 25, 1973, while you were under oath, were you asked this question and did you give this answer?

MR. MEISELMAN: I seem to have a wrong reference number in my notes.

THE COURT: That happens.

(Pause)

MR. MEISELMAN: I will go back to that, sir.

Q Did you see Alphonse Morella before June 5th?

A 1972, no, I did not.

Q While you were under oath and on November 26,

1973, were you asked the following question and did you give the following answer:

"Question: Under what circumstances did you first meet Alphonse Morella?

"Answer: To the best of my recollection, I saw him before June 5th, when he was employed as a salesman."

Were you asked that question and did you give that answer?

A Not to my knowledge.

Q Yes or no?

A If it is in that record, yes, sir, but not to record I didn't see him before June 5th.

MR. MEISELMAN: Would you concede that I have read this correctly, Mr. Ritchie?

MR. RITCHIE: I will concede that he read it correctly, your Honor.

Q Now, that money that you used for the trailer, for the purchase of the trailer, where did that come from?

A Mr. McNamara as an advance on the job.

Q Wasn't it a loan?

A I don't know what the techicalities --

Q You are a grown man, Mr. Goberman --

THE COURT: He said he does not see the

technical distinction. He said it was an advance on the job.

Q You could call it an advance or a loan?

MR. RITCHIE: Objection, argumentative.

THE COURT: He told you.

Q On January 8, '74 -- withdrawn.

At the time you purchased this trailer, you had no personal resources to buy it, did you?

A That is correct, sir.

Q Were you asked these questions and did you give these answers, Page 267:

"Question: Sir, approximately when did you purchase this trailer?

"Answer: Approximately March 1972.

"Question: And at that time, did you have the personal resources necessary to meet -- to buy this trailer?

"Answer: No, I did not.

"Question: Did you borrow the money?

"Answer: Yes, I did.

"Question: From whom did you borrow the money?

"Answer: Mr. McNamara."

Were you asked those questions and did you give

those answers?

A I already testified to that --

Q I am asking you --

A I already testified to that, sir.

Q You testify a lot, don't you, Mr. Goberman?

THE COURT: Stricken.

Q Have you ever stated under oath that you don't know where those monies came from?

A I do not recall, sir.

Q You may have?

A I do not recall, sir.

RP fls.

CROSS-EXAMINATION

BY MR. MEISELMAN (Contd):

Q Do you have any books, ledgers, checkbooks, memoranda, any documents in your business which you could use to refresh your recollection?

A Yes, sir, I do.

Q Do you have them here today?

A No, sir, I do not.

Q Were you requested to bring them?

A Yes, sir, I was. I was requested to bring them on October 15th if I remember it correctly.

Q And that's when you expect to bring them and not before?

A All I have in New York State is the checks and the balances that I spoke to you about a year ago are in North Carolina. I do not have the funds to go there and get them.

Q All your records are outside the state?

A Excluding the checks and what my attorney has.

Q What documents do they have?

A I don't know.

Q Didn't you testify under oath that he has the ledgers and the checkbooks?

A He returned them to me and I brought them to

North Carolina.

Q When did he return them to you?

A I don't know.

Q Was it within the last few weeks?

A No.

Q Months?

A I could not tell you --

Q You have no conception whatsoever?

A No, sir.

Q But you took them outside the state to Carolina?

A Correct.

Q and they are no longer in the state?

A I still have the checks, sir.

Q I am asking you about your ledgers, your check-books and your books of account, they are no longer in the state; is that right?

MR. RITCHIE: Your Honor, I would object to this entire line of questioning.

THE COURT: This is way besides the point, Mr. Meiselman. Please move along.

Q On November 27, 1973, were these books in the possession of your attorneys?

A I do not no exactly what records were in his possession.

Q What books?

A Checkbooks and ledgers --

Q "Question: Of what company?

"Answer: Either myself or personally or HarMac.

"Question: I ask you to produce those records" --

MR. RITCHIE: I object to the form of those questions --

MR. MEISELMAN: May I finish, sir?

MR. RITCHIE: There has been no preface to this --

MR. MEISELMAN: I'm trying to refresh his recollection as to when he got ride of the books.

THE COURT: We are so far from the point in this case, Mr. Meiselman. That is not to be pursued.

MR. MEISELMAN: Thank you, sir.

BY MR. MEISELMAN:

Q Now, do you remember if before June 5th either you or HarMac Contractors were doing the general construction work on this job?

A Please repeat that.

MR. MEISELMAN: Mr. Reporter, would you please repeat it.

(Question read.)

THE COURT: Were you or HarMac doing the ...

construction work in the period preceding June 5, 1972, on the McNamara Re-New Car Inc.?

THE WITNESS: It was myself, then I went to a corporate identity, if I think I understand the question.

BY MR. MEISELMAN:

Q My question was: Do you remember if prior to June 5th, either you or HarMac was doing the general construction work on this job?

A Can you explain specifically what you mean?

THE COURT: Who was doing the work?

MR. MEISELMAN: I am asking him if he remembers.

THE WITNESS: I was on the job personally and I had a super on the job.

Q Do you remember who was doing the work?

A As far as the company name --

Q As far as who was doing the work as general contractor.

A Now I think I understand.

Myself, personally, and then I went to HarMac.

Q You remember that?

A Yes, sir, because I have checked it since then.

Q But on November 27th, did you remember?

A No, sir, I did not.

Q Did you work for HarMac on this job?

A Yes, sir, I did.

Q On November 27th, 1973, were you asked the following questions and give the following answers:

"Question" --

MR. RITCHIE: I would object to this. There is no question -- no possibility of inconsistency before the Court at the present time.

THE COURT: I don't quite see the point.

MR. MEISELMAN: There is a question, your Honor, I think it is just one, as to who at a given time performed the work on this job. Know, too, I am impeaching the credibility of this witness --

THE COURT: Please move along.

BY MR. MEISELMAN:

Q Did yougive this answer to this question:

"Question: Did you perform any work on the job as an employee of HarMac?

"Answer: I do not remember."

Were you asked that question and did you give that answer?

A That's correct, because I did not.

(Continued on next page.)

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Goberman-cross/Meiselman

MR. MEISELMAN: Nothing else, sir.

I move to strike anything after that.

THE COURT: Yes.

Q As a matter of fact, do you recall if you or any company with which you were associated performed any work on this job site from June 5 to June 28, 1972?

A Yes, I do recall.

Q Did you recall it back in November of 1973?

A I would not remember, but since that time I have checked my records and my records show that I have done work on that job.

Q In other words, without having checked your records, you could not tell this court and jury whether you or any company you were engaged in actually worked on this job between June 5 and June 28, 1972?

MR. RITCHIE: Objection, argumentative.

THE COURT: May I heard that repeated?

(Question read.)

THE COURT: You object?

MR. RITCHIE: Yes, on the ground it is argumentative, phrased in the terms of "in other words."

MR. MEISELMAN: This is cross-examination.

THE COURT: I know, but the difficulty here

is the terminology. It becomes increasingly clearer the term "work" as used has produced a great deal of confusion, because it isn't clear whether you are talking about who was the responsible person or who was actually doing the digging, brick-laying, the steel erecting in terms of individuals.

MR. MEISELMAN: May I rephrase the question?

May I please have the exhibit that is the contract, Mr. Ritchie?

MR. RITCHIE: We will have it up in a minute.

THE COURT: What is this, the contract?

MR. MEISELMAN: Yes.

Q Did you or any company with which you were associated, do any work as a general contractor on the project, which is the subject of the contract which is now in evidence?

A Yes, I did.

Q Did you recall this in November of 1973?

A I didn't know you whether you meant personal work or --

Q I did not ask you about personal work. I asked you who was the general contractor.

A Yes, I understood it as work --

Q In November of 1973 you understood "general

contractor" to mean work --

A I didn't know if you meant corporation wise or general wise or working with my own two hands.

Q I didn't ask you whether it was with any company you were engaged --

THE COURT: That's the conclusion.

Why don't you ask him if his company acted as the general contractor, ifthat is what you are getting at?

MR. MEISELMAN: No, sir.

Q Did Len Al ask you for any money on this job?

A Yes.

Q Did they do so in writing?

A Yes.

Q Do you remember when?

A I could not tell you exactly when.

Q Can you tell me approximately?

A Approximately May or June of 1972.

Q May or June of 1972, or prior there to, was Len Al working on this job?

A No, these materials were charged to them, the men worked for me under my payroll, but for union purposes --

Q I ask you sir --

MR. MEISELMAN: I move to strike that.

THE COURT: No, the motion is denied.

MR. MEISELMAN: Exception.

THE COURT: The question could not be answered fairly in any other terms than those in which the witness is seeking to answer.

His answer must not be interrupted.

A (Continuing.) -- I paid the men with my own payroll checks and the union's welfare fund went in under Len Al's checks, and that's the bill they gave me. All the employees were under my payroll.

Q The employees were on your payroll?

A Correct.

Q No question about that?

A No question about it.

THE COURT: Who is "my"?

THE WITNESS: HarMac's payroll, your Honor.

Q How about subcontractors, did they bill you and did you pay them or did Len Al pay them?

A There were two subcontractors that had billed Len Al --

Q Just answer the question, please.

Did you pay them or did Len Al pay them?

A I paid all but one bill, which I gave a check

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to Len Al and they paid them -- they sent a bill to Len Al's office because I was always there.

Q Who was that?

A I think Getz Crane Service, if I am not mistaken.

MR. MEISELMAN: May I have this marked?

THE COURT: Yes.

THE CLERK: Marked for identification as Defendant McNamara's Exhibit S.

Q I show you Defendant's Exhibit S, sir, and I ask you if this is a bill addressed to Len Al from Two Brothers with reference to the job on Nesconset Highway?

A Correct.

Q That was billed to Len Al for work on this job?

A Correct.

Q What is the date of the work?

A May 8, 1972.

MR. MEISELMAN: Thank you. I ofer it into evidence.

MR. RITCHIE: Objection, your Honor.

THE COURT: It simply corroborates what he says, is that the grounds of your objection?

MR. RITCHIE: Yes, I think it is irrelevant.

THE COURT: He says he is examining on credibility, so it will be received.

MR. RITCHIE: It is received for the purpose of impeaching the credibility?

THE COURT: It doesn't happen to do so, but that is the purpose it is being offered.

THE CLERK: Defendant McNamara's Exhibit in evidence.

Q Did there come a time, Mr. Goberman, when you were interviewed by Agent McMullen?

A Yes, there did come a time.

Q Did you tell Agent McMullen that starting in early May of 1972 you started slowing down the construction and assigning fewer men to the job?

A Correct.

Q By whom were you employed --

MR. RITCHIE: I move to strike that last question and answer. I think it is beyond the scope of the matters before the Court.

THE COURT: No, I think it may be shown.

MR. RITCHIE: Yes, your Honor.

Q By whom were you employed on June 28, Mr. Goberman?

A I am not sure of whom I was employed by on

June 28, 1972.

Q Do you have any memory at all as to who you were employed by on June 28, 1972?

A No sir, I do not recall.

Q Do you have any books or records which would in anyway refresh your recollection?

A AS to specifically that date, I do not think so, sir.

Q Now, on June 28, I believe you testified that you were frightened and you were hurt?

A Correct.

Q I believe you testified yesterday that you don't remember where you were the next several days or that night -- both?

A That is correct.

Q You didn't know where you were that evening and for the next several days?

A That is correct.

Q Have you searched your mind over all this period of time where you possibly could have been?

A No sir, I have not.

Q Haven't you thought about it at all?

A I just do not know where I was.

Q And on June 28, you were frightened of the

defendants, weren't you?

A That is correct, sir.

MR. MEISELMAN: May I have this marked, please?

THE COURT: Certainly.

THE CLERK: Marked for identification as Defendant McNamara's Exhibit T.

Q I show you Defendant's Exhibit T for identification, and ask you whether your signature is on it.

A That is correct.

Q What is the date of that, sir?

A June 29, 1972.

Q To whom addressed?

A To Mr. Thomas McNamara.

MR. MEISELMAN: I offer it into evidence.

MR. RITCHIE: May I see it?

(Document shown to counsel.)

MR. RITCHIE: No objection.

THE COURT: Received.

THE CLERK: Now Defendant McNamara's Exhibit T in evidence.

MR. MEISELMAN: May I read this letter to the Jury?

THE COURT: Yes.

MR. MEISELMAN: HarMac Construction Corporation, June 29, 1972.

"Mr. Thomas McNamara, McNamara Re New Cars Inc., 102 Main Street, Port Jefferson Station, New York.

"Dear Mr. McNamara:

"You are hereby notified as per article nine: 6.1 that you have failed to make a payment due as per requisition number 4, May 30, 1972, approved by your engineer and have further failed to pay requisition number 5.

"You are hereby advised that no work will proceed until payment is received on the requisitions submitted, since Thaddeus Lemanski, your consulting engineer, per article 15 is not on the job. We will not proceed with the construction.

"You are further given notice purpsuant to article 14.1.1 that unless payment is received, we will terminate this contract.

"Submitted by H. Goberman, signed H. Goberman, HarMac Construction Corporation.

Q Mr. Goberman, where was this letter typed?

A I do not know, sir.

Q When was it typed?

A I could not tell you that either.

Q Who typed it?

A I do not know that either.

Q Did you type it?

A No sir, I did not. I do not know how to type.

Q So you must have dictated it to somebody?

A It had been dictated by an attorney. I don't have the intelligence --

Q Did you speak to an attorney on June 28th?

A Yes, I did.

Q When on June 28th did you speak to an attorney?

A I could not tell you when.

Q Was it before or after you saw Dr. Contoro?

A I could not tell you that either, sir.

Q So you spoke to an attorney about sending a letter to Mr. McNamara on June 28th?

A I told him the incident --

Q No sir, did you talk to an attorney about sending a letter to Mr. McNamara?

A No sir, I spoke to him about theincident and that is what I assume he advised to do and that was done.

Q Did you sign Exhibit T in evidence?

A Yes, I did.

Q When did you sign it?

A I cannot tell you when.

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CROSS-EXAMINATION

BY MR. MEISELMAN: (Cont.)

Q No recollection whatsoever?

A No, sir.

Q When is the first time that you spoke to a law enforcement officer concerning the incidents which you related to this jury that happened on June 28th?

A I -- to the best of my recollection, I think it was around September 1972.

Q And that was because you were frightened in the interim?

A That is correct. I didn't feel like dying.

Q And you were so frightened of Mr. McNamara that you wrote him a letter demanding payment and threatening to cancel the contract?

A That's correct.

Q Now, tell me, sir, isn't it a fact that on June 28th this job site was posted and you were forbidden to enter it by the Town of Brookhaven; yes or no?

A Yes, sir, it was.

Q So that no work could be done on June 28th, could it?

A That's correct, sir.

Q And it was posted --

MR. RITCHIE: Objection, your Honor, I ask that that be stricken.

It calls for a legal conclusion as to town regulations and it's beyond the scope of this witness' knowledge.

THE COURT: It is not --

THE WITNESS: The town --

THE COURT: Just a moment. It is not anything that you can accept from the witness as a correct statement of the law. It could be his understanding at the time, and if that is what he is testifying to, you may hear it.

BY MR. MEISELMAN:

Q You had what you call a superintendent on the job, didn't you?

A That's correct.

Q And did that superintendent ever advise you that the premises had been posted as unsafe by the Town of Brookhaven, in words or substance?

A I believe so.

Q And can you tell me, sir, when he so advised you?

A I cannot tell you that.

Q Can you tell me whether it was a week before

JUne 28th?

A I do not know, sir.

Q A month before June 28th?

A It could not possibly be a month before June 28th.

Q You have no recollection other than what you've told -- withdrawn.

Give us your best recollection of what the super told you about the posting.

A That Mr. McNamara arranged to have it posted through Mr. Romeo. He --

Q Now, we will make you happy and listen to that. Answer the question, please.

A I'm just telling you, sir --

MR. RITCHIE: Your Honor, counsel is --

THE COURT: You ask a question and you must take the answer.

MR. MEISELMAN: Very well. Go ahead.

THE WITNESS: And Mr. Romeo and Mr. McNamara went to the town, and Mr. McNamara asked the town to post the job and that was somewhere in the area of between -- to the best of my recollection -- the 23rd to the 27th.

BY MR. MEISELMAN:

Q This is what your super told you?

A That's correct.

Q And you are positive and you remember that?

A Yes, sir, I do.

Q And what is the super's name?

A Gary Traibbi.

Q Was any work being done on this job on June 27th?

A Other than the superintendent on the payroll, I don't believe so, sir.

Q Was the superintendent on the payroll doing any work on this job?

A In what terminology -- may I ask you, sir, inwhat terminology do you mean "work"?

Q Well, sir, what is your terminology of work?

THE COURT: Please, let's move on here.

Q Was he performing his job?

HTE COURT: Was he doing any construction work on the job?

THE WITNESS: Not physically with his hands. No super works with his hands.

Q I ask you the same question for June 26, June 25 and June 24, was there work on this job?

A I could not tell you that exactly today, sir.

Q Do you have any papers or records which would refresh your recollection?

A I don't know, sir.

Q Now, between June 5 and June 28th, did you see Thomas McNamara?

A Yes, I did.

Q How often did you see him?

A Approximately every day.

Q Did you discuss this job with Mr. McNamara?

A At various times, yes, sir.

Q Is it your recollection that Mr. McNamara threatened you at any time between June 5 and June 28, on the job site?

A Yes, sir, I do.

Q On September 24, 1973, while you were under oath were you asked this questionand did you give this answer:

"Question: Were any threats made to you by Mr. McNamara at that time?

"Answer: I cannot recall."

A That's correct, sir.

MR. RITCHIE: Your Honor, I'd object and ask that that question be stricken. There is no pinning down the time by that question.

THE COURT: It sounded very vague to me, Mr. Meiselman.

MR. MEISELMAN: I am trying to -- I'll be glad to read the rest of it.

THE COURT: Yes, I would suggest so.

BY MR. MEISELMAN:

Q Starting on page 116:

"Question: Did you have any other conversation with any of the other parties to this action with respect to changes in the contract?

"The Witness: I had arguments with them about it.

"Question: With whom?

"Answer: Thomas McNamara.

"Question: Tell us when and where.

"Answer: Specific date, I couldn't give you. It would be on the job site.

"Question: Was it after June 5 and before June 28?

"Answer: Yes.

"Question: What was the conversation that you had with Mr. Thomas McNamara?

"Answer: One I do recall was in regard to the front stoop.

"Question: Tell us what you said to him and he said to you.

"Answer: About raising heights and specifics of the conversation I cannot give you.

"Question: Was there anyone else present?

"Answer: I don't know.

"Question: You don't know or don't remember?

"Answer: I don't remember.

"Question: Were there any threats made to you by Mr. McNamara at that time?

"Answer: I cannot recall."

Were you asked those questions and did you give those answers?

MR. RITCHIE: Objection, your Honor.

THE COURT: Overruled.

A Yes, sir, I did.

Q Were they the truth?

A As to the specific incident with the stoop, yes.

Q They were the truth?

A That's correct.

Q Mr. McNamara didn't threaten you, did he?

A On the specific stoop incident, not that I recall.

Q At any time?

A Yes, sir, while I was pouring the front apron, I had to pour it eight inches or I was supposedly going to get it.

Q Were you asked this question on September 24, 1972, and did you give this answer?

"Question: How about McNamara, Thomas McNamara, did you ever talk to him?

"Answer: Specifically the threats, I couldn't say yes or no. JUst a lot of heated words."

Were you asked that question and did you give that answer?

MR. RITCHIE: Objection, your Honor, I don't think that is a full and fair sampling.

THE COURT: I'm sorry?

MR. RITCHIE: I think there have to be more questions asked than that in order to --

THE COURT: As I heard it, it was a completely general question.

MR. MEISELMAN: That's correct, sir.

A Yes, I did give that answer.

Q Was it the truth?

A Yes, sir, it was.

Q Well, today or yesterday you testified about a threat or threats by Thomas McNamara, under oath.

8a GoBerman - cross/Meiselman:

A That's correct.

Q Was that the truth?

A Yes, sir, it was.

(continued next page.)

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CROSS-EXAMINATION

BY MR. MEISELMAN (Cont'd):

Q As a matter of fact, didn't you state under oath that Mr. Thomas McNamara threatened to kill you daily at the job site?

A I believe so, I did, sir.

Q Did you so state under oath?

A Yes, sir, I did. I believe I answered that question.

Q You answered it when?

THE COURT: Just now, I think. Is that what you meant, Mr. Goberman?

THE WITNESS: Yes, your Honor.

THE COURT: In other words, he treated you as having asked him the same question twice.

Q Did Mr. Thomas McNamara threaten to kill you almost daily at the job site?

A No, sir, he didn't.

Q So that when you said that under oath, it was untrue, wasn't it?

A It was over-exaggerated, sir.

Q You swore to the truth of that statement --

THE COURT: He said it was an exaggeration.

MR. MEISELMAN: I see.

May I have this marked, sir?

THE COURT: Exhibit U, Defendant McNamara's Exhibit U for Identification.

(So marked.)

BY MR. HEISELMAN:

Q I show you Defendant's Exhibit U for Identification, sir, and ask you whether you recognize anybody's handwriting on that paper?

A Yes, sir, I do.

Q Is it your handwriting?

A Yes, sir, it is.

Q Does it have to do with the job in question?

A Yes, sir, it does.

Q Does it have an item on it in your handwriting with respect to a trailer?

A May I read it?

Q I just asked you, does it have such an item on it?

A It says: Payments from McNamara --

MR. HEISELMAN: Please, your Honor --

THE COURT: You just answer the question.

THE WITNESS: Yes, sir, it does.

MR. HEISELMAN: I offer it, your Honor.

MR. RITCHIE: I have one question on a voir dire.

VOIR DIRE EXAMINATION

BY MR. RITCHIE:

Q This is your writing?

A Yes, sir, it is.

Q It is from the ledger book that you kept, or some kind of account book that you kept?

A That's correct.

MR. RITCHIE: I have no objection, your Honor.

THE COURT: I think you should ask him whether it is an account of his, of Len'Al's or HarMac's, does that matter?

MR. MEISELMAN: Thank you, sir, it does.

THE COURT: Can you tell by looking at this from whose account book or record it is, yourself, Len-Al's or HarMac?

THE WITNESS: Either myself or HarMac.

BY MR. MEISELMAN:

Q May you state to the Court, sir, which record book it came from?

A I said --

THE COURT: He has said, "It's mine or Harmac," as he said.

Q You don't know?

A That's correct.

MR. MEISELMAN: I offer this in evidence.

THE CLERK: Defendant McNamara's Exhibit U in Evidence.

(So marked.)

xxx

BY MR. MEISELMAN:

Q Going back to that paper where you said -- where you said he threatened to kill you almost daily, when you exaggerated --

A That's correct.

Q Did you exaggerate other items in that paper?

A In which paper?

Q In the paper in which you said that Mr. McNamara threatened --

THE COURT: You had it in your hand, but I don't think there was any specific discussion of a paper between you and the witness in that connection.

MR. MEISELMAN: May I have this marked for identification.

THE CLERK: Defendant McNamara's Exhibit V for Identification.

(So marked.)

xxx

BY MR. MEISELMAN:

Q I show you this paper, Defendant's Exhibit V for Identification, sir, and I ask you whether you have ever

seen it before?

THE COURT: Or the original of it.

Q Or the original thereof?

A The paper itself, no. I just signed it and my attorneys made it out.

MR. MEISELMAN: I move to strike, your Honor.

THE COURT: Have you ever seen this before, or the original of it?

THE WITNESS: As I said, I've never really seen it. All I did was sign the back pages of any papers that my attorneys made out. I don't look at them.

Q You never saw the original of this?

A That's correct, sir.

Q You signed a blank back --

A No, sir, I didn't read it. It was made out and all I did was sign the last page.

Q It was made out in the sense, whether it was the original or a copy, these papers were attached to this, weren't they?

A That's correct.

Q And you saw what it was, didn't you?

A No, sir, I didn't read it.

Q You didn't read it?

A That's correct.

Q Didn't you swear --

MR. MEISELMAN: May I offer this?

Q By the way, this paper, Defendant's Exhibit V, this is a bill of particulars in the action in which you are suing the defendant Thomas McNamara for two and a half million dollars; is that correct?

A I didn't even know -- I thought it was one million six. I've never even seen the papers.

MR. MEISELMAN: I move to strike the latter part, your Honor.

Q Is that correct, is that the bill of particulars?

A That's what it says. I do not know the legal terminology.

MR. MEISELMAN: I offer it, your Honor.

MR. RITCHIE: May I see it? It's a rather lengthy document, your Honor.

THE COURT: It seems to be.

MR. RITCHIE: Your Honor, the Government has no objection.

THE COURT: It will be received.

THE CLERK: Defendant McNamara's Exhibit V marked in evidence.

(So marked.)

xx

Q Mr. Goberman, that was sworn to by you on July 23,

1973, I believe.

THE COURT: No.

MR. MEISELMAN: Conformed, sir.

THE COURT: Not quite.

MR. MEISELMAN: It has the date and the stamp.

Q The document you are referring to is dated July 23, 1973?

A Whatever it says.

Q Does it say so?

A Yes, it does.

MR. MEISELMAN: Thank you.

Q As a matter of fact, you remember your conversations with Mr. Thomas McNamara only vaguely, if at all?

A Only certain incidents, that's correct, sir.

Q On January 8, 1974, at approximately five or six months after Defendant's Exhibit V is dated, were you asked under oath this question and did you give this answer:

"Question: Do you remember any of the conversations you had with the defendant Thomas McNamara at the job site?

"Answer: Vaguely."

Page 278, were you asked that question and did you give that answer?

A That's correct, sir.

Q On June 28th -- withdrawn.

I show you another paper dated September 18, 1973, and I ask you if you have ever seen that or the original thereof at any time.

A Sir, as I've said before, I just signed the last shee of these things. I don't read them.

Q Do you recall that paper?

A I particularly do not.

Q At all?

A No, sir, I do not.

Q Weren't you questioned about this paper last year?

A Yes, I was.

Q Did you remember about it last year?

A I do not recall.

Q Did you sign the original of this paper?

A I assume I did, if it is a document.

Q Don't assume. Can you tell me whether you signed the original of that paper?

A I really do not know.

Q Do you know if that is a supplemental bill of particulars in the action you have against Mr. McNamara?

A Sir, I do not understand legal terminology.

Q You don't know what a bill of particulars is?

2 fls.

THE COURT: Supplemental means more.

A I don't understand.

Q At all?

A No, sir, I do not.

Q Did you make out a paper for your attorney in which he described for you, or you described to him, the injuries which you allegedly sustained on June 28, 1974?

A Sir, I turned over a photostatic copy of the doctor's letter to the attorney. He made out the papers, and all I did was sign the back page.

Q In other words, sir, if I am wrong, please correct me, the only information you gave your attorneys was the doctor's letter about your injuries, is that right?

A That is correct, and just generally spoke to them.

Q Did you speak to them about your injuries, other than the doctor's letter.

A Sir, you attorneys know than better than me. You're one.

Q I'd like an answer to my question.

A All I did was generally speak to him. He made out the papers --

Q Did you speak to your attorneys about your injuries?

A As I said, generally.

Q Did you tell him specifically the parts of your body that were injured?

A I gave him the doctor's letter, and I generally spoke to him.

Q Did you Swear to a document which your attorney prepared concerning your injuries on June 28, 1974?

A Anything my attorney makes out, I always sign the back page.

Q Without looking at it?

A That is correct. He's my attorney.

Q Tell me, sir, did you sustain injuries to your forehead?

THE COURT: I guess you better tie that down to one or both of these dates that have been under discussion.

Q When is the date that you went to Dr. Puntura?

A June 28, 1972.

Q On June 28th, in the incidents which you related to his Honor and the Jury, did you sustain injuries to your forehead?

A Yes, sir, I did.

Q Where?

A All I know, it was my -- my forehead is my forehead.

Q Did you sustain injuries to your eyes?

A No, sir, I did not.

Q Did you sustain injuries to your nose?

A Not to my knowledge, no, sir.

Q Mouth?

A No, sir.

Q Cheeks?

A No, sir.

Q Entire face area?

A No, sir, I did not.

Q Buttocks?

A I really do not re all.

Q Testicles?

A Not to my knowledge.

Q So that if you had signed a document which contained that allegation, that allegation would not be true, is that correct?

A I had just given the attorney the doctor's letter. How he made it out --

THE COURT: No, no. If there is any such assertion in the paper, it is not a correct assertion; is that right?

THE WITNESS: Then the attorney did not make it out correctly.

Q When you went to Dr. Punturo, I believe you testified yesterday that he gave you a prescription that you had filled on Larkfield Road; is that correct?

A Yes, I am pretty sure it was on Larkfield Road.

Q And you are pretty sure that you went to see a pharmacist and had the prescription filled?

A That is correct.

Q On September 25, 1973, while you were under Oath, were you asked the following question, and did you give the following question, and did you give the following answer:

"Question: Did he prescribe anything for you?

"Answer: No, he didn't."

Were you asked that question, and did you give that answer?

A Yes, sir.

Q It wasn't the truth, was it?

A My memory serves me a lot better in the recent couple of months.

Q So that back in September of 1973, your memory was not as good is it is now? approximately thirteen months later?

A No, sir, I was just looking to get out of that room, with all you people, and I wanted to go home.

Q In other words, you will say whatever is necessary

to get out of a room under Oath.

A No, sir, that is --

MR. RITCHIE: Mr. Goberman, hold it. That was a very argumentative question.

THE COURT: The objection to it is sustained.

Q Would you testify falsely as a matter of convenience, Mr. Goberman?

A No, sir. This is a courtroom. We met at the --

Q I am not asking you where it is. Would you testify --

A In a courtroom I would not lie under any circumstances.

Q But some place else, under Oath, you would, is that right?

A To my understanding --

Q Right or not, sir?

A I do not understand what oral Oath is, only Oath in a courtroom; we must tell the truth.

Q Did you understand the Oath that was given to you before you took the stand in this courtroom?

A Right, that you must tell the truth.

Q And you have taken Oaths before?

A Not in a courtroom procedure. A courtroom procedure, you do not lie.

Q Didn't you give an Oath to the questions that you gave here?

A But it was not a courtroom proceeding, sir.

Q In other words, it was not inside a courtroom?

A A courtroom, you must tell the truth.

Q Was it in a court house?

A It was in a room downstairs, but it was not in a courtroom.

Q It was in the court house, wasn't it?

A That's correct.

Q And you were Sworn in before you testified, weren't you?

A Not by a Court Clerk or a Judge.

Q Somebody else Swore you in?

A A private individual, sir.

Q Do you know if they had the authority to do it?

A No, sir.

Q Did you question it?

A Sir, I wouldn't know --

Q You did not question it?

A No.

Q So, to any of the answer you gave you didn't give much consideration to, did you, because you didn't consider yourself under Oath; is that correct?

A At that particular time I did not -- Your Oath 602
to me was not like an Oath you take in a courtroom.

Q There are different kinds of Oaths, is that right?

A That is correct.

Q For different occasions?

A No, sir, in a courtroom it's perjury if you lie.

Q Is that the only reason you don't lie, because it's perjury?

A No, because now it's in a courtroom in front of people, and you do not lie in a courtroom.

Q But you can lie elsewhere?

A That is correct.

Q Even when you are under Oath?

A To me, the only Oath that counts is in a courtroom.

Q Otherwise you will Swear falsely any place, if it isn't in a courtroom?

A No, sir, that is wrong.

MR. RITCHIE: Objection. Argumentative.

THE COURT: I think it has been asked and answered, Mr. Meiselman.

Q You were asked those questions in connection with your lawsuit against Mr. McNamara for personal injuries, weren't

you?

A That is correct, sir.

Q And you knew that it was for the purpose of eliciting information with respect to your claim, isn't that so?

A To my general understanding, it was for you to elicit information for this trial.

Q Were you suing Mr. McNamara?

A Yes, sir.

Q Before this trial?

MR. RITCHIE: Objection, your Honor. Asked and answered.

THE COURT: We have been all over this, Mr. Meiselman.

MR. MEISELMAN: Your Honor, I am getting unresponsive or evasive answers, and I am trying to pin it down.

MR. RITCHIE: Objection.

THE COURT: It is all very clear. Please do not comment on the witness' testimony, or I will permit Mr. Ritchie to answer your comments.

BY MR. MEISELMAN:

Q Mr. Goberman, on June 28th, did you tell your sister-in-law about the occurrences you recited to the jury and

his Honor?

THE COURT: That is Mrs. Alan Goberman?

MR. MEISELMAN: Yes, sir.

A Just that I had gotten a beating.

Q Did you tell her about the incident you recited to the Jury and his Honor?

THE COURT: No. He said just that he had been beaten up.

What was the rest of it?

THE WITNESS: That was it.

Q Nothing else?

A Not to my general knowledge.

Q Did you make that statement in words or substance to your wife?

A Yes, I did. She was the one that drove me to the doctor.

Q Did you discuss it with her fully, or vaguely?

A Vaguely. I didn't go into any details.

Q What did you say to her vaguely?

A I do not recall. Just that I had gotten beaten up, and so forth.

THE COURT: We will recess now until five minutes after 2:00. Please do not discuss the case with one another or anyone not on the jury until it is given to

you to decide.

(Jury excused.)

MR. FISCHETTI: I have a problem, your Honor, on scheduling, sir.

I understood your Honor to say that tomorrow we would be starting a little late.

THE COURT: I can't be sure, but what I was really warning you about is that we will be a little late in getting started, because, as I say, if present plans hold, we have a probation violation at 9:30.

MR. FISCHETTI: I have a particular problem: I have a sentencing scheduled before Judge Roberts in New York County tomorrow morning that had been adjourned on one prior occasion, and I, unfortunately, told him that you were not working on Friday; I spoke too hastily.

However, I have arranged with Mr. Leone to represent the interests of my client, Mr. DeLiso, who will consent on the record at the end of the day, if that meets with your Honor's satisfaction.

THE COURT: If it is all right with Mr. De Liso.

MR. FISCHETTI: If I am not in the middle of doing anything, which I don't believe I will be, tomorrow morning.

Mr. DeLiso, on the record, do you consent that Mr. Leone represent you tomorrow morning until my return,

because of another engagement?

DEFENDANT DE LISO: Yes, sir.

THE COURT: That is just while Mr. Fischetti is off before Mr. Justice Roberts.

DEFENDANT DE LISO: Yes.

THE COURT: Is that all right with you, Mr. Leone?

MR. LEONE: Yes, your Honor.

(Luncheon recess taken.)

End of AM

(continued on next page.)

AFTERNOON SESSION

HAROLD GOBERMAN, resumed and testified further as follows:

CROSS-EXAMINATION

BY MR. MEISELMAN (Continued):

Q Did you state in this trial in words or substance, Mr. Goberman, that you used aliases that you could get jobs?

A That is correct, at the present time.

Q How much do you spend a year for clothes?

A I haven't spent nothing in the last couple of years.

Q How about last year?

A Last year I haven't been able to buy nothing.

Q Isn't it a fact that you testified under oath that you spent $10,000 a year on clothes?

A Yes, sir, it is.

Q And that you don't wear a suit more than ten times before you throw it away?

A That is correct.

Q When you were stopped by the police on June 5th, were you bleeding --

MR. RITCHIE: Objection, assumes facts not in evidence. There has been no testimony --

THE COURT: Was he what?

MR. RITCHIE: We are assuming facts not in evidence. There was no testimony that he was stopped by the police on June 5th.

MR. MEISELMAN: On June 28th, were you stopped by the police?

THE WITNESS: Yes, I was.

Q When you were stopped, were you bleeding?

THE COURT: Were you what?

MR. MEISELMAN: Bleeding.

A No, sir, I was not.

Q Now, on June 5th did any of the defendants in this case tell you in words or in substance that they wanted you off the job?

A No, sir, they did not.

Q They told you or someone told you that they wanted you to get off the job, didn't they?

A I was to do it their way.

Q As a matter of fact, after June 5th Mr. Thomas McNamara loaned you money to pay your payroll, didn't he?

A That is because he didn't have the requisitions --

Q Please answer my question --

THE COURT: Just whether he did or did not.

A Yes, sir.

Q And shortly after he gave you the money for

your payroll, did he then not give you a check for $32,000 some-odd dollars?

A That is correct.

Q As a matter of fact, you had and your corporation had no financial resources for this job of any kind?

A That is correct.

Q And the monies that you received on the requisitions, you put into the bank account of HarMac?

A That is correct.

Q Was Janet McCartney doing any work on this construction site?

A No, sir, she was not.

Q Did you pay her out of the HarMac account?

MR. RITCHIE: Objection, your Honor, irrelevant.

THE COURT: It will be received, perhaps not for the purpose which offered.

A Yes, I did give her checks.

Q Did your brother Izzy work on the job?

A Yes.

Q Is he a guard or a carpenter or what?

A Carpenter.

Q Would you pay him for guard service?

A When?

Q Yes or no.

A Yes, I would.

Q Would you pay him for security?

A That is correct, I would.

Q Did you have any security service or guards on this job?

A Yes, I did.

Q Who were they?

A At times they were --

Q Beg your pardon?

A At times a few Suffolk County police officers and at times my brother.

Q Would you identify them, please.

A I was asked --

Q Would you please identify them.

A One was Gene Brossi.

Q Yes, Gene Brossi worked on the job as a mason, didn't he?

A Yes.

Q As a guard or as a mason?

A As a mason.

Q I am asking you what security people you had on the job, if any.

A We had -- we ran into some trouble --

Q Just identify the people.

MR. RITCHIE: I object on the grounds of relevance.

THE COURT: Yes, this is far from the issues in the case. Sustained.

Q Mr. Goberman, do you have any marks presently on your right forearm?

A What do you call "marks"?

Q Any kind of marks other than what you will find on an ordinary --

THE COURT: No, never mind.

MR. MEISELMAN: I am serious about it.

THE COURT: Connected with this case?

MR. MEISELMAN: With identification -- any identifying marks on your arm?

THE WITNESS: Yes.

Q Would you describe it, please.

A I have a tattoo of a panther possibly seven inches long.

Q Do you have any other identifying marks on your upper left arm?

MR. RITCHIE: I will object, as irrelevant.

MR. MEISELMAN: It is a foundation question, your Honor.

THE COURT: All right.

A Yes, I do. A pair of wings and U. S. Air Force written above it.

Q Now, on June 5th at the trailer, were you frightened?

A In the beginning, not really.

Q There were no threats in the trailer, were there?

A No physical threats, no, sir.

Q There were no threats at the trailer, were there?

A As to physical threats, there were not.

Q Tell me were you so frightened that you stated at the trailer -- I beg the indulgence of the jury and the members of the Bar -- that you told someone to "go 'f' himself"?

A No, sir, I didn't tell anybody that.

Q Did you testify under oath on November 6th -- 26, 1973?

Were you asked the following question and did you give the following answer?

"Question: What if anything did you say to Mr. Alphonse Merolla?

"Answer: I am not going to use that language

in front of the stenographer.

"Question: I assure you, Mr. Witness, that the stenographer has heard various sorts of language.

"Would you tell us to the best of your recollection what if anything you said?

"Answer: The beginning was I told him 'Go "f" himself.'"

Did you give those answers to those questions?

A Yes, I did.

Q Did you not state under oath that there were no threats at the trailer?

A That is correct.

Q Isn't it a fact that the meeting at Chuckie's -- was it Chuckie's Charcoal Broil -- the meeting therewas arranged by you, was it not, Mr. Goberman?

A Yes, it was.

Q And you had called Mr. Spatorella how long before he met you at Chuckie's?

A I'd say anywhere from one and a half to two hours.

Q And did you know him well enough -- Withdrawn. Where did you call him, at his office or home?

A I do not remember where I called him.

Q Did you know him well enough, after calling

him that morning he immediately came an hour and a half, two hours later and met you at Chuckie's Charcoal Broil?

MR. RITCHIE: Objection, that calls for a conclusion of Mr. Spatarella's mind -- the thought processes of Mr. Spatarella.

THE COURT: He called him and he went. We have that in the record. Please.

Q You knew him as a racketeer, didn't you?

A Yes.

Q Where is Mr. Spatarella now?

A In prison I assume.

Q Now, at Chuckie's how long were you there?

A Could be anywhere from half an hour to an hour.

Q And isn't it a fact that at Chuckie's the job was only vaguely discussed?

A In what reference do you mean "vaguely discussed"?

Q Did you use the words in testifying earlier, that when you were at Chuckie's the construction job was only vaguely discussed?

A I assume so, sir.

Q Is that a fact that it was only vaguely discussed at Chuckie's?

A That is correct.

Q And the rest of the conversation was just generalities; is that right?

A That I was involved in, yes, sir.

Q I'm not asking you to testify to anything you were not involved in, because there was a time when you were gone from the table where the discussions took place.

A Yes.

Q You were gone anywhere from half an hour to an hour?

A Correct, sir.

Q While you were there, the only discussions were generalities?

A That is correct.

Q And were you not told at that time, in words or substance, that you were to do the job and you would be compensated?

A That is correct, sir.

Q Did you ever ask your brother, Allan, whether he saw you beaten?

A I think I have, sir.

Q When did you first ask him?

A I do not recall.

Q Well, your brother came and you testified left with you at a time when you say you were beaten?

A That is correct.

Q But you can't recall what his answer was when you asked him if he saw it?

A I do not recall when I asked him or so forth.

Q Didn't you discuss this with him immediately after the incident?

A Yes, I did.

Q And you can't remember what he said?

A That is correct, sir.

Q By the way, you owe Spatarella money, don't you?

A Correct, sir.

Q Seven or eight thousand dollars?

A That is correct.

Q On the meeting of June 5th, at Mr. McNamara's office, weren't you told in words or substance to put more men on the job?

A That is correct.

Q At that meeting did you go to punch Thomas McNamara --

A After he --

Q Did you not do that?

A After --

Q Did you or did you not?

THE COURT: No, sir, he may answer the question with an answer that is appropriate to the question.

A (Continuing) -- after he went to kick me in the groin I backed off and went to punch him.

Q But you went to punch him; is that correct?

A That is correct, it is self-defense.

Q You were frightened, weren't you?

A Yes, sir.

Q But you went to punch Thomas McNamara?

MR. RITCHIE: Objection, asked and answered.

Q Thomas McNamara didn't touch you, did he?

A Yes, he touched me on the day of June 5.

Q He did?

A That is correct, sir.

Q On September 25, 1973, while you were under oath, were you asked this question and did you give this answer:

"Question: Let me ask you again, tell us how Mr. Thomas McNamara touched you?

"Answer: Specifically I couldn't tell you."

Were you asked that question and did you give that answer?

A That is correct, sir.

HS:GA
T1R2 PM

Q Now, did your brother go with you to the bank after leaving the McNamara office?

A No, he did not.

Q On September 25, 1973, while you were under Oath, were you asked this question, and did you give this answer --

MR. PITCHIE: I object. He didn't lay the proper foundation.

THE COURT: Yes, he has.

Q "Question: Who accompanied you to the bank?

"Answer: John DeLiso, Alphonse Merolla, my brother and myself. There were four of us in the car."

Were you asked that question, and did you give that answer?

A Yes, I did.

Q Did your brother go into the bank with you?

A As I testified before --

Q Did your brother go into the bank with you?

A As I testified before, he did not go with us up to the bank.

Q Did he wait outside the bank?

A Sir, as I testified --

Q Just answer yes or no, sir.

A No, sir.

THE COURT: No, he must answer it in the sense

positive to the question.

MR. MEISELMAN: All right, sir.

Q On September 25, 1973, did you make this statement while under Oath:

"The Witness: I went into the bank in the company of Al Marolla, John DeLiso and my brother -- I think my brother may have waited in the car."

Did you make that statement?

A Yes, I did.

Q Did you go down to your car to get the checkbook out of it?

A I was told to go down.

Q All right, go ahead.

A I was told to go down to the car, open the trunk, as they said my checkbook was in there, and so I did, and it was not there.

Q You went to the car, looked for the checkbook and it wasn't there?

A Correct, sir.

Q On September 25, were you asked the following question, and did you give the following answer, starting at line 23, on page 198:

"Question: I am not interested in what you were told, I am asking you what you did."

On page 199, the Witness:

"I was told to go down to my car and get my checkbook, which I said I didn't have on me. I went down to the car, accompanied by Al Merolla, John DeLiso and Alan Goberman, and got my checkbook, and thereafter went to the bank."

Did you make that statement while you were under Oath?

A Yes, I did.

Q Now, sir, when you got to the McNamara office -- Thomas McNamara's office, -- There's an inner room and an outer room, if you want to describe it as such; is that correct?

A Yes.

Q The inner room would be Thomas McNamara's office?

A Correct.

Q And the outer room would be an office where there are office personnel?

A Correct.

Q Now, was your brother in the outer room or the inner room?

A At what point in time?

Q When he left the room --

MR. RITCHIE: Objection, your Honor.

THE COURT: I think that sort of added to the confusion.

Q Did there come a time when your brother left the room?

A Are you talking the inner room, sir?

Q Yes.

THE COURT: Did a time come when your brother was in the inner room?

THE WITNESS: And left, yes, there was.

Q He left the inner room. Did he go to the outer room?

A To the best of my recollection, he went to the hall.

THE COURT: Corridor?

THE WITNESS: That is correct, your Honor.

THE COURT: Did have to cross the so-called "inner room" to get to the corridor?

THE WITNESS: Yes, your Honor.

Q Were you asked this question on September 25, 1973:

"Question: When I asked you before who was present --

"Answer: He wasn't present in the room. He was in the outer room, and he came into the inner room at a later time."

Were you asked that question, and did you give

that answer?

A That is correct, sir.

Q Now, are you sure that the door was shut between the inner room and the outer room --

THE COURT: He testified to that. Next question.

Q Now, when you went into the inner room, were there people in the outer room?

A I do not recall.

Q On November 27, 1973, were you asked the following questions and give the following answers, page 352:

"Question: Was there anybody in the outer room?

"Answer: There was people there."

Were you asked that question, and did you give that answer?

A That is correct.

Q Tell me, sir, how many people, approximately, were in the outer room?

A I would not know.

Q On November 27, 1973, were you asked the following question, and did you give the following answer:

"Question: Were they men or women?

"Answer: Both.

"Question: Approximately how many people were there?

"Answer: I do not know.

"Question: Two,one, five, a dozen? How many, approximately?

"Answer: Approximately ten."

Were you asked those questions, and did you give those answers?

A Yes, I did.

Q In that outer room, that is for office workers, wouldn't you say?

A Correct.

Q And that's what these people were doing, office work?

A What I assume I meant is total parties, with what was going inside, and outer.

Q When you came into the outer room, did you see anybody there at all?

A I do not recall, sir.

Q On June 5, in Mr. McNamara's office, were you told in words or substance to finish the job on time?

A Correct.

Q Were you told in words or substance to stop playing around?

A That is correct, sir.

Q Were you told in words or substance to do what had to be done to finish the construction of the job?

A That is correct, sir.

Q Now, in that inner room, during this conference, there was a lot of noise, would you say?

A I really could not tell you that, sir.

Q Were you asked the following question, and did you give the following answer on November 27, 1973, while under Oath:

"Question: During this period of time, from the moment when you entered the office, until you moved somewhere -- You just stated where you were at the last desk -- Had any voices been raised?

"Answer: Quite a few voices.

"Question: Had any noise been made?

"Answer: Quite a bit of noise."

Were you asked those questions, and did you give those answers?

A Yes, I did.

Q Now going to the events of June 28th, Mr. Goberman:

After the paper was signed, -- that you described to the Jury -- did John McNamara stay in the room?

A Yes, he did.

Q On November 27, 1973, while under Oath, were you asked these questions, and did you give these answers, page 433:

"Question: After you signed this paper that you just testified to, how long did you remain in that place?

"Answer: Fifteen minutes.

"Question: During that interval of fifteen minutes, did anybody enter or leave the room?

"Answer: John McNamara left the room.

"Question: When had John McNamara left the room?

"Answer: After I signed the paper."

Were you asked those questions, and did you give those answers?

MR. RITCHIE: Your Honor, I must object. There is no inconsistency there.

THE COURT: What is that?

MR. RITCHIE: I must object, because there is no inconsistency there, and, therefore, the entire question is irrelevant.

THE COURT: Well, I am not clear as to what date the question refers.

MR. MEISELMAN: June 28th.

MR. RITCHIE: June 28th.

MR. MEISELMAN: I believe I prefaced it by June 28th.

MR. RITCHIE: Yes, he did.

THE COURT: No, he may inquire.

Q On June 28th, Thomas McNamara was not there at all?

THE COURT: That has been asked and answered.

BS fls

(continued on next page.)

CROSS-EXAMINATION

BY MR. MEISELMAN: (Cont'd.)

Q Did you make notes of your conversation of June 28th at Mr. McNamara's office?

A No, sir, I did not.

Q Did you testify under oath before today that you had?

A Yes, sir, I did.

Q Did you also testify previously under oath, that you had made those notes and given them to the FBI?

A That's correct, sir.

Q That wasn't true?

A I was referring to mental notes.

Q I beg your pardon?

A I was implying to mental notes.

Q After you left Mr. McNamara's office, did you go to the Pioneer Diner?

A Yes, I did.

Q You went in to buy cigarettes?

A That's correct, sir.

Q When you came out of the Poineer Diner, did you jump into your car?

A I don't know if I jumped, I got into my car. That's an expression "jumped."

Q On November 27, '73, were you asked the following questions and did you give the following answers, Page 440:

"Question: What did you then do?

"Answer: Got out of the cab, went inside the diner for maybe half a second to get a pack of cigarettes, jumped in my car and took off."

Were you asked that question and did you give that answer?

MR. RITCHIE: I must object on the grounds of irrelevancy. There is absolutely no inconsistency shown.

THE COURT: You may answer.

A Yes, sir, I did.

Q Do you remember what you said to the police when they stopped you on June 28th?

A I don't recall, sir.

Q Were there any marks on your face when you were stopped by the police?

A I don't recall, sir.

Q When is the first time that you looked at your face on June 28th after you left Tom McNamara's -- I am sorry, the McNamara office?

A I would assume not until that evening.

Q When did you leave the McNamara office?

A Approximately 10:45, give or take.

Q In the morning?

A That's correct.

Q And you didn't look at your face until that evening?

A That's correct.

Q When you looked at your face that evening, did you see any bruises or bleeding on your face?

A No, it was just sore.

Q At the time you were examined by Dr. Punturo, did you have black and blue marks on your body, or any part of your body?

A I don't recall.

Q Did you have any cuts on your body?

A It's whatever -- cuts it is, no, it is whatever medical language the doctor used.

Q I'm not using medical language, I'm asking you, did you have any cuts on your body at the time you were examined by Dr. Punturo?

A No, sir, I don't believe so.

Q After June 28th, did you drive a car?

A Yes, sir, I have.

Q When is the first after June 28th, that you

drove a car?

A I don't know, sir.

Q Did you have anybody drive you around?

A On June 28th, yes.

Q How about after June 28th?

A I don't recall, sir.

Q Prior to June 5th, had you been involved in any accident in which you injured any parts of your body, the same parts that you are talking about here in this courtroom?

A I have been involved in a few accidents.

Q I'm talking within a period of a few months prior to June 5th, were you involved in any accidents in which you injured the same parts of your body that you are talking about here in this courtroom?

A If I'm not mistaken, I think I got a sprained right ankle a few months before that.

Q As a matter of fact, sir, that you took a motor vehicle and drove it through a garage in April of 1972?

A From my general knowledge, I fell asleep in the car. When I woke up, it was laying in the back of a hill, it went through a garage.

Q But you had fallen asleep while you were in

5 Goberman-cross-Meiselman

the garage?

A I did.

Q And you came out to the back of the garage with your car and found yourself where?

A Up into a hill.

Q And the car was pretty demolished, wasn't it?

A It was not completely demolished, it was damaged.

Q Was the windshield broken?

A Yes, it was.

Q Was the hood demolished?

A I really do not recall, sir.

Q Were the fenders demolished?

A They were dented, not demolished.

Q Did you have that car repaired?

A That's correct. By Raines Cadillac. It was about eight hundred some odd dollars.

MR. MEISELMAN: Mark that.

THE CLERK: Document marked for identification as Defendant McNamara Exhibit W.

(So marked)

Q Is this a copy of the bill for the repair of that vehicle, on April 4, 1972?

A That's correct, it is.

MR. MEISELMAN: I offer it in evidence, your Honor.

MR. RITCHIE: May I see it, your Honor.

THE COURT: Certainly.

MR. RITCHIE: YOur Honor, I'd only object on the grounds of relevancy. I don't think there is any need for this. We have had the testimony already.

THE COURT: I think perhaps the witness can refresh his recollection from it, don't you, Mr. Ritchie?

MR. MEISELMAN: I don't want to take up the Court's time. I think it speaks for itself at the moment.

THE COURT: Received.

THE CLERK: Defendant McNamara's Exhibit W in evidence.

(Marked)

Q Is it a fact, Mr. Goberman, that on June 30th, is it a fact or two days after June 28th, you had to pay a debt of $7,000?

A I don't know what you are referring to.

Q A debt to your wife for which you had assigned the stock of Farmingville Realty Corp.?

MR. RITCHIE: Objection, your Honor. This is

irrelevant.

THE COURT: When was this?

MR. RITCHIE: June 30th.

MR. MEISELMAN: June 30th, two days after June 28th, your Honor, of '72.

THE COURT: It seems far afield, Mr. Meiselman.

MR. MEISELMAN: I am showing -- I would rather not state, your Honor, if you wish a side bar, I'd be glad to explain why.

THE COURT: Very well.

(Side bar follows)

MR. MEISELMAN: Your Honor, this man had all the stock interest in Farmingville Realty Corp., which is the owner of 81 Hanrahan Avenue in Farmingville. He had a separation agreement with his wife Frances, which I have been informed required him to pay $7,000 on June 30th, or the stock of Farmingville Realty, which was held as collateral security would be turned over to her. This is motivation for him seeking and receiving money on June 28th.

MR. RITCHIE: It is not evident of his having received any money.

MR. MEISELMAN: I think it shows his state of mind with respect to wanting money.

THE COURT: I don't see it and there is no question that he wanted money.

MR. MEISELMAN: Oh yes, but this is an added motive.

THE COURT: I think the record is replete with evidence that he had a very human affection for money, and in large quantities. We will be here forever this way. This is so far beyond the needs and necessities and properities of the case. Let's move along.

(Open Court)

BY MR. MEISELMAN:

Q Mr. Goberman, I believe this morning that you testified that you only used your aliases for business, is that correct?

MR. RITCHIE: Your Honor, that was not his testimony.

THE COURT: Can I hear the question, please?

Q Did you use your aliases for business?

A At the present time, yes, sir. Business and employment.

Q How about in 1973, did you use it for business?

A Business and a personal nature.

Q On January 9, 1974, in a courtroom, did you

testify under oath and were you asked the following questions and did you make the following answers:

"Question: Yesterday didn't you tell us you only used it on your car license, your driver's license?

"Answer: That is correct, and my pilot's license.

"Question: But you don't use it on anything else?

"Answer: On business,no, I do not."

MR. RITCHIE: Objection, your Honor. The question was posed toward the year 1973. We are talking about yesterday and today dating back to January 9, 1974. There is no way there can be any inconsistency.

THE COURT: We have been at the alias question ad nauseum.

MR. MEISELMAN: I think the answer to this question might furnish that, your Honor. Should I obtain ananswer or should I go to something else?

THE COURT: Go ahead. Answer the question.

A What are you referring to, sir?

Q Were you asked those questions --

THE COURT: See, now we go on and on to some

more.

Go ahead.

Q Were youasked those questions and did you gove those answers?

A Yes, sir, I did.

Q All right.

MR. MEISELMAN: May we mark this please, for identification?

THE CLERK: Defendant McNamara Exhibit X for identification.

(So marked)

R2 fls

(Continued on next page)

BS:tr
T2/R2 a.m.



Mr. Goberman, I show you this paper. Have you ever seen it before?

A I really don't know.

Q Is there any handwriting on it in red?

A Yes sir.

Q Do you know the handwriting of Gary Taibbi?

A No sir, I do not.

Q Did you have anything to do with meeting the payroll, the total of which may be shown on that paper, on this job?

A Please explain that.

Q Well, sir --

THE COURT: Do you recognize the paper, its purpose, anything about it?

THE WITNESS: It looks like --

THE COURT: Yes or no.

THE WITNESS: Yes, I do. It looks like a payroll for --

THE COURT: All right.

THE WITNESS: -- the McNamara job.

THE COURT: It looks like the payroll for McNamara's Re New Cars Inc. job?

THE WITNESS: That's right.

THE COURT: What did you have to do with it,

if anything?

THE WITNESS: I can assume what Mr. Meiselman is getting at, it --

THE COURT: Never mind that. What did you have to do with it, if anything?

THE WITNESS: I really couldn't -- do not know that.

THE COURT: You know nothing about that at all?

A I said it looks like a payroll sheet made out for the McNamara job.

Q For how much?

A It says total: 2,000 --

MR. RITCHIE: Objection, your Honor, reading from that item.

THE COURT: It doesn't matter. It will get in quicker and maybe we will get through with it.

It's how much?

THE WITNESS: It looks like total, $2,446.

THE COURT: Bring forward to check.

Q Now, sir --

MR. MEISELMAN: May I have this marked, sir?

THE CLERK: Marked for identification Defendant McNamara's Exhibit Y.

(So marked.)

THE COURT: All right. Do you recognize this check and do you tie it in with the payroll page you have in front of you?

THE WITNESS: Yes sir, I do.

THE COURT: How much is the face amount of the check?

THE WITNESS: Dated June 8, 1972.

THE COURT: Face amount of the check?

THE WITNESS: $2,446.

THE COURT: The face amount of the payroll sheet?

THE WITNESS: $2,446.

THE COURT: Who drafted -- drew the check?

THE WITNESS: It was drafted from --

THE COURT: Who drew it? Who signed it?

THE WITNESS: Mr. McNamara.

THE COURT: Thomas?

THE WITNESS: Mr. Thomas McNamara.

THE COURT: Payable to the order of --

THE WITNESS: Harry Goberman and HarMac Contracting Corp.

THE COURT: Thank you.

MR. MEISELMAN: I offer these two in evidence, your Honor.

MR. RITCHIE: May I see that?

MR. MEISELMAN: May I have this marked?

THE CLERK: Marked for identification as Defendant McNamara's Exhibit Z.

(So marked.)

MR. RITCHIE: Your Honor, my only objection would be on the grounds of relevance.

THE COURT: I take it the point is it is in between the two dates.

MR. MEISELMAN: Yes sir.

MR. RITCHIE: Yes, your Honor.

THE COURT: The two dates being June 5 through June 28.

THE CLERK: Defendant's Exhibit X and Y in evidence.

(so marked.)

Q I show you Defendant's Exhibit Z and I ask you if you have ever seen that before.

A Yes sir, I have.

Q Is that a check payable to you by Thomas McNamara?

A That is correct.

Q In the amount of $32,610 and some odd cents?

A Eighty, 80 cents.

Q Did you receive it?

A Yes sir.

Q From Mr. Thomas McNamara?

A That is correct, sir.

Q And you cashed it and used the proceeds?

A That is correct.

Q And that was pursuant to a requisition that you made upon Mr. McNamara for this job site?

A That is correct.

MR. MEISELMAN: I offer it in evidence. The date of the check is June 16, 1972.

MR. RITCHIE: My only objection, your Honor, would be relevance.

THE COURT: The only relevancy is that it is in between the two dates.

MR. RITCHIE: Yes.

THE COURT: Received.

THE CLERK: Defendant's McNamara Exhibit Z in evidence.

(So marked.)

THE COURT: What was the date on it?

MR. MEISELMAN: June 16, 1972, your Honor. Your Honor, I would like to have three papers, if you please, marked for identifi-

cation.

THE CLERK: Marked for identification Defendant McNamara's Exhibit AA, Defendant McNamara's Exhibit AB and Defendant McNamara's Exhibit AC for identification.

(So marked.)

BY MR. MEISELMAN:

Q Now, I show you, sir, Defendant's AA, AB and AC respectively, and I ask you whether your signature appears on these papers.

A That is correct, sir.

Q And they are with reference to the job for McNamara Re New Cars on Nesconset Highway?

A That's correct, sir.

Q They are requisitions numbers 1, 2 and 3 respectively, are they not?

A That is correct.

MR. MEISELMAN: I offer them in evidence, your Honor.

THE COURT: What is the last one dated?

MR. MEISELMAN: Requisition 1, your Honor is dated --

THE COURT: Please, the most recent one, what is it dated?

MR. MEISELMAN: June 1, 1972.

THE COURT: That is the most recent of the three?

MR. MEISELMAN: Yes sir.

MR. RITCHIE: Your Honor, I have objection to this. I would like to -- it is on the grounds of relevancy, and I would like some argument on it if your Honor would indulge me.

THE COURT: You what?

MR. RITCHIE: I would like some argument on it, if your Honor would indulge me.

THE COURT: We will have a short recess, members of the jury. Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

(Jury excused.)

MR. MEISELMAN: If there is going to be argument, your Honor, may I respectfully request that it be out of the presence of the witness?

(Witness excluded.)

THE COURT: All right, Mr. Ritchie, what is the amount of the amount of the last one?

MR. RITCHIE: This is very complicated.

MR. MEISELMAN: The amount of the last one is

$32,610.

THE COURT: Does that correspond with the amount of the check exactly?

MR. MEISELMAN: Exactly, yes.

MR. RITCHIE: My opposition to this is that to put Defendant's AA, AB and AC into evidence is to bring in by indirection what your Honor has ruled --

THE COURT: Apparently what the defendants want to do is show that the defendants had motive and opportunity for the attack on the defendant of which they have been accused, that they paid him his requisitions up to date, but he had not done the job and he had a beating coming to him and he was going to get it.

I believe that's what they want to prove.

MR. RITCHIE: I believe your Honor's ruling very early on was that that would not be allowed to be proved, that the contract dispute had nothing to do with this trial --

THE COURT: That is quite right, because no matter what they owed him or had paid him, they couldn't beat him up --

MR. LEONE: If they did.

MR. MEISELMAN: There is no argument with

that, your Honor -- if they did. But I think that the defendants' conduct immediately prior to this and subsequent to the act charged is evidence of their purpose and intent to do this, if at all they did it.

You don't beat up a man on June 5 and pay him 35 thousand dollars within the next week, if you are going to extort 25 thousand dollars or --

THE COURT: If it turns out that he hadn't paid the brick contractor and a few other people with money you gave him meanwhile, and you told him to straighten the job out, you certainly might feel somewhat irritated, but I wouldn't beat anybody up, your Honor.

MR. RITCHIE: The date on this third requisition is May 15, 1972.

THE COURT: It wasn't paid until June 16.

MR. MEISELMAN: The contract calls for payment, your Honor, on the 10th of the following month, I believe.

THE COURT: Yes.

MR. MEISELMAN: Meanwhile, he had been receiving advances against these requisitions and after this, your Honor, as one --

THE COURT: See, that's where this little

payroll check came in.

MR. MEISELMAN: That's right.

MR. RITCHIE: Your Honor, there had been -- this is dated May 15, 1972 --

THE COURT: So it would have theoretically, I guess, been payable somewhere around the 25th or so.

MR. RITCHIE: I believe at that time they were operating on double, two weeks at a time. Is that correct?

MR. MEISELMAN: What is that?

MR. RITCHIE: Two weeks on a requisition?

MR. MEISELMAN: As far as I know, they were operating on what the contract says they were operating on.

MR. RITCHIE: I believe there had been a fourth requisition by that --

MR. MEISELMAN: And also a fifth, it wasn't due and we didn't pay it.

MR. RITCHIE: I would like an opportunity to talk to my witness, just to find out exactly what this is all about. I don't see the relevance of this at the present time.

Your Honor had ruled that it would not be -- this type of evidence would not come in and --

THE COURT: No, I have said throughout that we are not going to go into the rights and wrongs of the whole contract, who is right and who is wrong in that dispute, if anyone is.

MR. MEISELMAN: I will respect your Honor's ruling in that regard, and I will limit myself, and I think I will be through shortly, to these requsitions, the checks in payment there of, and the advances given, and I am finished with that.

(Cont'd on next page.)

1 THE COURT: I thought they were all in now.

MR. MEISELMAN: I have given the check for the 2446 and the 32,000. I have other checks.

THE COURT: Who cares about the earlier ones --

MR. MEISELMAN: He paid him a substantial sum of money in advances between March 4th and June 8th of 31,102 and total requisitions of $109.424.

I would submit those checks, if your Honor pleases, in bulk.

THE COURT: What is the purpose of that?

MR. MEISELMAN: To show that this witness has said that we were behind in our payments. That's why he was slowing down. We cannot let that go on unanswered

I think persons that honor their contracts are not the type of people that --

THE COURT: We are not in a position to find out whether he was orwas not slowing down.

MR. MEISELMAN: Your Honor accepted these at the last trial.

THE COURT: We are not going into that.

MR. MEISELMAN: You accepted them at the last trial in bulk and I would merely offer the same.

THE COURT: We are not going to make a career out of this.

MR. MEISELMAN: I expect to be finished with

2 this topic after I do that.

MR. RITCHIE: I would oppose the admission of the requisitions, but not the checks.

To open up the entire question --

THE COURT: I do not care how it goes in.

We are not going to go into the question of whether there was something wrong with that or something wrong with this, whether it was earlier or later.

The jury has practically the case decided already, unless they hear some fresh witnesses pretty darn soon.

MR. RITCHIE: Is your Honor ruling that it will be admitted into evidence?

THE COURT: If it is gotten in in the next seven and a half minutes.

MR. MEISELMAN: I will, your Honor.

(Jury present.)

BY MR. MEISELMAN:

MR. MEISELMAN: I offer into evidenceAA, AB and AC.

MR. RITCHIE: No objection.

THE CLERK: So marked.

MR. MEISELMAN: I offer for identification, sir, 15 checks. I ask that they be marked as one exhibit. Perhaps we can place them into one envelope.

3 Goberman-cross

THE CLERK: Marked for Identification as Defendant McNamara's Exhibit AD.

Q I show you Defendant's Exhibit AD, Mr. Goberman, 15 papers, and I ask you if not each one is a check drawn either to your order or HarMac Corporation or both with respect to payments made and loans made with respect to the job on Nesconset Highway from McNamara re New Cars, Inc.?

THE COURT: Loans or advances?

MR. MEISELMAN: Both. Whatever they may be.

(Document shown to witness.)

THE COURT: What is your answer?

A Yes, they are.

THE COURT: They are all connected with the Nesconset Highway job?

THE WITNESS: That is correct, your Honor.

MR. MEISELMAN: I offer them into evidence, your Honor.

THE COURT: Received.

MR. RITCHIE: No objection.

THE CLERK: Defendant McNamara's Exhibit AD in Evidence.

Q Do you have an attorney, sir, by the name of Mr. Cefalos?

A Yes, I do.

4 Goberman-cross

Q After the events of June 5th, did your attorney meet with counsel representing McNamara re New Cars, specifically I believe on June 8th?

A I could not tell you the exact date, but from my knowledge they did have a meeting.

Q It was a few days after June 5th; is that correct?

A That is correct, your Honor -- Mr. Meiselman.

Q Thank you, sir.

Was that at the office of Len-Al?

A It was two meetings. One at the attorney's office and one at Len-Al. I do not know if my attorney was at the office of Len-Al.

MR. MEISELMAN: May I identify this, please?

THE CLERK: Document marked for Identification as Defendant McNamara's Exhibit AE.

Q I show you Defendant's Exhibit AE and I ask you if your signature is thereon.

A Yes, it is my signature thereon.

Q Can you identify that paper?

A Yes, I can.

Q Whatis it?

A It is a memo to a construction contract entered into --

Q It is a construction contract referred to as Government's Exhibit 11 in Evidence; is that correct?

A That's correct.

MR. MEISELMAN: I offer it into evidence.

(Shown to counsel.)

MR. RITCHIE: No objection, your Honor.

THE CLERK: Now Defendant McNamara's Exhibit AE in Evidence.

THE COURT: Let me see it.

THE CLERK: Yes, sir.

(Document shown to Court.)

Q Did Thomas McNamara personally lend you money for the payroll on this job?

A Loaned and advanced, meaning the same thing, yes, sir.

MR. MEISELMAN: May I have this marked, please?

THE COURT: Document marked for Identification as Defendant McNamara's Exhibit AF.

Q I show you Defendant's Exhibit AF, sir, and I ask you if your signature appears on it.

A Yes, it is.

Q In whose handwriting is it in?

A In mine.

Q And is that with reference to a loan made to you

by Thomas McNamara to meet the payroll of May 16, 1972?

A Yes, it is.

MR. MEISELMAN: I offer it into evidence.

(Shown to counsel.)

MR. RITCHIE: No objection, your Honor, save that of relevance of course.

THE CLERK: Defendant McNamara's Exhibit AF in Evidence.

MR. MEISELMAN: It is only a few lines. May I read it?

THE COURT: Yes.

MR. MEISELMAN: I am not reading the heading.

MR. RITCHIE: I'd ask that the entire document be read.

MR. MEISELMAN: It would be pointless to read the top of it.

(Document shown to Court.)

THE COURT: This is a letterhead. I think what Mr. Ritchie has in mind is that you indicate what the letterhead is so it will make sense.

MR. MEISELMAN: The top of the document reads:

"Local Steel & Supply Company, Division of Thompson Materials Corporation."

There are various items of products by Local

Steel & Supply, address and phone number.

THE COURT: Long Island address and phone number.

MR. MEISELMAN: Yes.

"Received 1,700 loan, for payroll May 16th from Thomas McNamara, repayable on receipt of requisition No. 2."

Signed, "Harry Goberman."

THE COURT: What was the date of that?

MR. RITCHIE: May 16, your Honor.

MR. MEISELMAN: May I have just a moment, your Honor?

(Pause.)

(Continued on next page.)

CROSS-EXAMINATION

BY MR. MEISELMAN: (Cont.)

Q Do you recall, Mr. Goberman a meeting in the office of Len-Al Construction on or about June 8, 1972 with John McNamara and yourself, and a Mr. Desmond O'Sullivan?

A Yes, sir, I do.

Q Was anyone else present?

A I don't recall.

Q Desmond O'Sullivan was an attorney?

A That's correct.

Q And at that meeting, arrangements were made to supply you with monies for the job; isn't that correct?

A That is correct, sir.

Q Monies which were to be held in escrow by your lawyer until certain work was done; is that right?

A It's because the requisitions --

THE COURT: No, no.

THE WITNESS: Yes, sir.

THE COURT: Is that right? That the money was going to go to your lawyer in escrow until certain work had been completed?

THE WITNESS: To that effect.

BY MR. MEISELMAN:

Q Was this money given to your lawyer, Mr. Cefalos,

MR. RITCHIE: I'll object to this line of questioning as irrelevant.

THE COURT: Overruled.

A Yes, it was.

Q Did you make any complaints to Mr. O'Sullivan on or about JUne 8th that you were beaten on June 5th?

A No,sir, I did not.

Q Made no mention of it?

A That is correct.

Q All you discussed was money?

A That is correct.

Q Was it a pleasant meeting?

A I really do not recall.

Q Was it unpleasant meeting?

A I really do not recall, sir.

MR. MEISELMAN: No further questions.

Your witness.

MR. GILLEN: Our afternoon break.

THE COURT: That depends on how many cigarette smokers there are on the jury.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

(Jury leaves courtroom.)

MR. RITCHIE: Your HOnor, much to my surprise I realize that we may be finishing up with Mr. Goberman --

THE COURT: Ms. Seltzer and Mr. Leone, who is known for his protracted examination, which is limited only by discretion --

MR. LEONE: This will be only five seconds.

MR. RITCHIE: If we are finished before the afternoon, I will not have any witnesses to put on. I had anticipated a three or four-day cross-examination.

We will have a witness tomorrow morning.

MR. FISCHETTI: How about redirect?

MR. RITCHIE: I don't know what you intend to do.

THE COURT: Mr. Fischetti is going out in the hall to sharpen his stiletto.

MR. MEISELMAN: I have subpoenaed Mr. George Haber, who is an attorney for Mr. Goberman and who Mr. Goberman said he had given custody of these records to.

Mr. Goberman appears quite unfriendly and will not appear on appointment -- I mean Mr. Haber-- he stated that he will be here pursuant to that

subject but will not tell us what documents he has.

Perchance he has them, I would like an opportunity to examine them.

MR. FISCHETTI: We have your Honor's consent that Mr. Goberman is still under cross-examination until he brings in the records?

THE COURT: Yes, we have Rule 17 rights that would apply there.

MR. RITCHIE: I would imagine so.

THE COURT: In other words, we may have to get rough with Mr. Haber.

MR. MEISELMAN: I don't think so. It's the records that I am interested in. What I do want is an explanation of what happened to them.

(Recess taken.)

(Jury present.)

(Harold Goberman resumes the stand.)

CROSS-EXAMINATION

BY MS. SELTZER:

MS. SELTZER: May I proceed?

THE COURT: Yes.

Q Mr. Goberman, my name is Marian Seltzer and I represent Al Merolla. You know him , don't you?

A Yes, I do.

Q Do you recall when it is that you first met him?

A On June 5th, 1972.

Q Is there a possibility that you met him on June 2nd, 1972?

A No, ma'am.

Q That you met him sometime before June 2nd?

A Very unlikely .

Q What do you mean?

A No possibility, because we both lived in the same township, I wouldn't ride --

Q Did you ever have dinner or any kind of meals with Mr. Merolla?

A No, ma'am, I didn't.

Q Did you ever have any drinks with Mr. Merolla?

A No, ma'am, I didn't.

Q Who is Angelo Merolla?

A To my knowledge, I assume Mr. Al Merolla's brother.

Q As a matter of fact, you pointed out Mr. Angelo Merolla at some point during this trial?

A Yes, ma'am.

Q Is Mr. Angelo Merolla the brother of Alphonse Merolla, do you know that?

A I do not positively know that.

Q Do you know that he is a relative?

A I do not know that either.

Q Did anyone ever tell you that he was Al Merolla's brother?

A I do not believe so.

Q Do you know what Angelo Merolla did for a living?

A Yes, Ma'am.

Q What was that?

A Car salesman.

Q McNamara Buick Pontiac?

A During the time of the incident in the indictment, was Angelo Merolla a car salesman at McNamara Buick?

A From my general knowledge, yes.

Q Was he general manager -- general sales manager of McNamara Buick?

A This is what I was told. I don't know that for a fact.

Q Do you know if Angelo Merolla was ever visited by his brother Alphonse Merolla at McNamara Buick?

A No, I do not know that.

Q Did you ever see them there together?

A On the day of June 5th, yes.

Q Did you ever see them there together on another date?

A June 28th.

Q How about between June 28th and June 5th, did you see them there together?

A I don't recall.

Q Is it possible that you saw them together?

A It's possible but I do not recall.

Q Do you know if Al Merolla bought a car from McNamara Buick?

A I was told he did but I do not know that for a fact --

MR. RITCHIE: Your Honor, I ask that the answer be stricken, on the grounds it's hearsay.

THE COURT: May I -have the question and answer.

(Record read.)

THE COURT: No, it may stand but that doesn't prove the fact, members of the jury. It is hearsay. He was asked a question. If it is the fact, he had some information about it if that's relevant.

BY MS. SELTZER:

Q Do you know if Al Merolla ever came into McNamara Buick to have his car serviced?

A I do not know.

Q Were you ever told that?

MR. RITCHIE: Objection, your Honor. Hearsay.

THE COURT: I think we are sort of presenting a hypothetical --

MS. SELTZER: It is not a hypothetical.

THE COURT: All right, go ahead and answer it, if you can.

THE WITNESS: I do not know that, Ma'am.

Q Did they have a service department at McNamara Buick?

A Yes, ma'am.

Q Did people who bought cars, able to take their cars there to have them serviced?

A I would assume so.

Q By the way, did you ever owe Mr. Merolla any money?

A Which one?

Q Mr. Al Merolla?

A No, ma'am, I did not.

Q Did you ever have any business dealings with Al Merolla?

A Yes, I did.

Q Was that before June 5th, 1972?

A No, ma'am, it wasn't.

Q Was it after June 5th, 1972?

A Yes.

Q Did you discuss any of these business dealings in a restaurant?

A Yes

Q Did you ever eat while at the -- those restaurants?

A Yes.

Q Did you ever drink while at those restaurants?

A Not to my knowledge.

Q The fact that you told me before you never had any meals with Al Merolla at any time, you are not testifying correctly?

MR. RITCHIE: Objection.

THE COURT: I think Ms. Seltzer is trying to point out to him it seems to be inconsistent with was he had earlier said.

THE WITNESS: What I thought you meant was before June 5th, 1972.

THE COURT: Well, now you are clear. After June 5th, 1972, you did; is that right?

THE WITNESS: That is correct.

BY MS. SELTZER:

Q How about June 28, 1972?

A No, ma'am.

Q So in other words, between June 5th and June 28th, 1972, you did have business dealings with Mr. Merolla?

A That's correct.

Q And did you -- are you sure that you didn't owe him any money?

A Correct.

Q Did he owe you any money?

A No, ma'am, he didn't.

Q Who is Sam Spatarella?

A I assume you are referring to Sal Spatarella?

Q Excuse me.

A He is in the refuse collection business.

Q He is a racketeer?

A To my general knowledge, yes, sir.

Q Who is a racketeer?

A Somebody involved in the rackets.

Q Would you explain what you mean by that?

A Activity other than legal, within the law.

Q You testified before that he was in jail; is that correct?

A That is correct from what I have heard.

Q He is in jail for extortion?

A I don't know what he is in jail for.

Q Now, what was your relationship with Mr. Spatarella?

A I did a fire rebuilt for him approximately '67 or '68; on various occasions he picked up the building materials that were left over on the job -- the stuff that goes to the dumps.

Q On which jobs?

MR. RITCHIE: I will object to this line of questioning.

THE COURT: Yes, it's going a bit far.

Q Did Mr. Spatarella have anything to do with the building of McNamara Buick?

A Other than the roll-up container, --

Q Excuse me?

A A roll-up container.

Q What does that mean?

A It's anywhere -- they range from 20 to 40 yards, that you put refuse material on. They drop a big box on the ground, a truck comes, hook a cable to it, bring it to the dumps.

Q How often would you say they came to the job site?

A I don't know.

Q Would you give us an approximation?

A I don't know. In other words, like I, myself, would go check my jobs at night and nobody knows how many times I am there. I am the only one there.

Q Who is Mr. Taibbi?

A The construction superintendent on the job.

Q How did you -- how did he come to be the construction superintendent?

A I hired him.

Q How did you hire him?

A Through a resume he sent to Len-Al's office.

Q When did he send that resume?

A I do not recall.

Q Do you recall what was on the resume?

A Just one slight thing, that he was employed by the Town of Brookhaven as a civil engineer.

Q Was there anything on the resume about his educational background?

A Yes, but I do not recall.

Q Do you recall if he said he was a college graduate or attended college?

MR. RITCHIE: Objection, your Honor.

THE COURT: This seems to be a good distance off from the direct.

MS. SELTZER: I will make my questions brief.

BY MS. SELTZER:

Q Did you check any of those things out?

A Only one thing but I didn't intentionally check. We both went to the Town of Brookhaven about engineering problems and he jumped into people that he knew there.

Q Did you check the education he put down or whether he had a criminal record or anything of that sort?

A No, ma'am, I did not.

Q I direct your attention to June 5th, 1972. You testified that you were at the trailer on the job site; is that correct?

A Correct.

Q And -- how did you get to the trailer on June 5th?

A I drove there.

Q Do you recall where you came from?

A Len-Al's office.

Q Do you recall testifying that in the trailer on the job site on June 5th, you met Mr. Merolla and I believe you said Mr. DeLiso; is that correct?

A Correct, Ma'am.

Q I believe you also told this jury it was that trailer on June 5th, that you were told that you had better

get the job straightened out, because these people were with Colombo, is that what you testified to?

A Connected and with Colombo.

Q They told you that on June 5th? Is that what your testimony is?

A Correct.

Q Mr. Goberman, isn't it true that you never told the Grand Jury, you never told Agent McMullen and you never testified in any other trials in this matter anything with regard to Colombo was ever said to you in that trailer on June the 5th?

A I do not recall.

Q Perhaps I could refresh your recollection.

Do you recall testifying on June 7th, 1973 -- 1974 in this courtroom?

A Yes, ma'ma, I do recall.

MR. RITCHIE: I am going to object to this unless he is shown all his prior testimony.

MS. SELTZER: I will.

THE COURT: If necessary.

MS. SELTZER: If Mr. Ritchie could come up with anything to refute this, I would be most interested.

BY MS. SELTZER:

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Q Did you testify at the first trial on January 7th, that such words were ever said in that trailer?

A I do not recall the exact words.

Q Is it possible that you never said that those words were said in that trailer?

MR. RITCHIE: Objection, your Honor -- is it possible.

THE COURT: I am not sure if I am clear on the thrust of the questioning in the particular form it's being asked.

Q Do you recall being asked these questions and do you recall giving those answers?

"Question:" THis is relating to the June 5th meeting in the trailer.

"Question: Did you have a conversation with these two gentlemen at that time?

"Answer: YEs, I did.

"Question: Can you tell us as closely as you can remember at this time, what was said to you an and what was said by you?

"Answer: Mr. Alphonse Merolla said; You got problems on this job and you had better get them straightened out.

"Question: What did you say, sir?

"Answer: I just looked at him.

"Question: What, if anything else, was said or done?

"Answer: He said he was connected and I had better find out who he was.

"Question: You say "he", are you speaking of Mr. Merolla still?

"Answer: That's correct."

MR. RITCHIE: Your Honor, there is more testimony --

Q (Continuing) "Question: What else was said by yourself, the defendant DeLiso, -- Merolla, or what did you see done?

"Answer: Mr. Alphonse Merolla said he was a 25 percent owner of McNamara and I should find out who he was. In the interim, I made a call to Salvatore Spatarella and asked him to come to the job.

"Question: Was there any other conversation?" -- then there is some colloquy -- "Was there anything else said to you?

"Answer: Not that I can particularly remember."

Now, was the name Colombo used in a conversation as you testified to it in January of 1974?

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(continued next page.)

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MR. RITCHIE: I object to the form of that question.

THE COURT: If you are asking him whether he testified to it, his answer would have to be, I take it, that that is the testimony you gave at that time, is that right?

Q Is that the testimony you gave at that time?

A Yes, ma'am.

Q Do you recall mentioning in any part of that testimony the name or the word, "Colombo?"

A Not that I recall, ma'am.

MR. RITCHIE: Your Honor, I would ask that the rest of the testimony be read.

MR. LEONE: Judge, may we have a side bar?

MR. GILLEN: Your Honor, that's not --

THE COURT: Just a minute, counsel will step up.

(Side bar.)

MS. SELTZER: Your Honor, I have gone through the entire record and there is nowhere in that testimony that the word "Colombo" was used on June 5.

MR. GILLEN: That's correct.

MS. SELTZER: I am not saying anything about

in bad faith. If there somewhere else in the testimony where that appeared --

MR. RITCHIE: The question was -- the whole line of questioning was prefaced by, "Have you ever mentioned the name Colombo in talking with Agent McMullen? In any of your Grand Jury appearances? In any prior trials in this case?"

MS. SELTZER: I am not finished yet.

MR. LEONE: In the tailer.

MR. RITCHIE: That was not said in the preparatory question to this whole line at page 286 of that testimony of January 8; he does mention that Al Merolla stated that he was connected with the Colombos.

THE COURT: Where does he say it was said?

MR. RITCHIE: This is said to him at one of the two diners.

MR. LEONE: That's exactly right.

THE COURT: The big thing and the only important thing is that the name was used; whether it was used at the trailer or at the Candle Light, means nothing.

MS. SELTZER: Your Honor, the Grank Jury minutes, the 203 --

THE COURT: Of course, the --

MS. SELTZER: They are all thoroughly consistent.

THE COURT: But the one thing you cannot add is that it was not used at the trial.

MR. LEONE: He never said that.

MS. SELTZER: I said at the trailer.

THE COURT: I don't give a gd about that and the jury doesn't give a gd about that, whether it was said to him in the trailer or in the Candle Light.

The big thing is that did he ever claim the name Colombo was used before -- and the answer to that question is not until the first trial.

Never to the Grand Jury or to Mr. McMullen or anywhere else, so far as you know?

MR. RITCHIE: It was mentioned, I believe, in 302's, also.

THE COURT: I don't know about that.

MS. SELTZER: Excuse me, your Honor. That was not my point.

THE COURT: If all you are talking about is the trailer --

MR. SELTZER: That's right.

THE COURT: Then make the point and don't make the other point because the jury, I can quite assure you, doesn't care where it was said; they just want to know was it said.

MR. GILLEN: This is the test as to whether it was said.

MR. LEONE: The theory of the defense is that this man is fabricating this, that at one time he says he is sure that the name Colombo was used at the first meeting, at another time he says --

THE COURT: I quite understand that.

MR. LEONE: That is our point.

THE COURT: That is no excuse for saying it in such a way that the jury does not get the point.

MS. SELTZER: Can I clarify the question?

THE COURT: Of course, you must.

MR. GILLEN: I thought it was quite clear.

MR. LEONE: We had gone over this last night at 10 O'clock at night, and I listened very carefully to the question and she said it right.

MR. RITCHIE: There was a whole line of questioning, your Honor.

THE COURT: But the question is that it comes out as a negative pregnant-type question,

because I can quite assure you, the jury doesn't give a darn about where it's said, --

MR. LEONE: In the whole context of the trial, I don't know.

THE COURT: The other point you are making is that the man fabricated it, the fact that one time he puts the use of the name "Colombo" in the trailer, at the next time he puts it at the Candle Light; that is a small point worth making, but it is a small point.

MR. LEONE: It's a small point, but not in the context of the entire case.

(Open court.)

BY MS. SELTZER:

Q Mr. Goberman, let me clarify my question. My original question was, isn't it true that the first time you ever mentioned the use of the word Colombo being said in the trailer --

THE COURT: That the first time you testified to the use of that name, you said it was used in the trailer.

MS. SELTZER: I didn't finish my sentence.

Q -- was at this trial and that it was never said that it was used in the trailer at any previous

trials or any previous grand jury testimony or at any discussions with Agent McMullen --

MR. RITCHIE: Your Honor, I object only for the purpose of further clarification so the question is understood.

THE COURT: Yes. In other words, I think what you must make clear to the witness, so he will know what he is being asked, is when did he first --

Q When did you first tell anybody that the word Colombo was used in trailer?

A I cannot recall when I first said anything about it.

Q Isn't it true that the first time you ever told anybody that that word Colombo was used in the trailer was when you testified here yesterday?

A No, ma'am, it is not correct.

Q Well, did you speak to Agent McMullen?

A To the best of my knowledge, yes, I have.

Q And do you know if Agent McMullen made a report of your discussions with him?

A I would not know that, Ma'am.

Q Let me --

MS. SELTZER: I would request that Agent

McMullen's report be marked for identification, your Honor.

MR. RITCHIE: Your Honor, it already has been.

THE COURT: 3500 what?

THE CLERK: Four, your Honor.

THE COURT: It will be marked for identification.

THE CLERK: Defendant Alphonse M. Merolla's Exhibit AG for identification.

(So marked.)

MR. RITCHIE: What date is that?

MR. SELTZER: This is Agent McMullen's report of September 1, 1972.

It was transcribed on that date. It was dictated on August 28, 1972. The interview was August 28, 1972.

MR. RITCHIE: For purposes of the record alone, the markings in connection with this proceeding is 3500-6. She has a Xerox copy and the 3500 numbering is not quite clear because it was done prior to the marking.

THE COURT: I think we have it retagged now so it will be all right.

MR. RITCHIE: Yes, your Honor.

Q Now, I ask you to look at this report and I

draw your attention to page 2 of that report.

Could you read page 2 to yourself (handing to witness.)

A Yes.

Q Is that a report of the conversation that you had with Agent McMullen?

A Yes, Ma'am.

Q Is there anything in that report of the conversation had between you and Mr. McMullen that indicates that you told Mr. McMullen that the word "Colombo" was used as a threat to you in the trailer?

A No, ma'am.

Q Thank you. Now, I refer you to your Grand Jury testimony. Do you recall testifying before the Grand Jury on October, I think it was 11th, 1972?

A Yes, ma'am.

Q Do you recall if you ever mentioned to the Grank Jury that the word "Colombo" was used to you as a threat, or whatever, in the trailer on June 5, 1972?

A No, I do not recall, ma'am.

Q Perhaps I can refresh your recollection. I refer you to the bottom half of page 4 and page 5 of that testimony. Would you read it to yourself?

MS. SELTZER: I apologize to the Court for

this delay but there is no other way I can present this.

THE COURT: Have you had a chance to read it?

THE WITNESS: Yes, your Honor, I have.

Q Is there anything in your Grand Jury testimony of October 11, 1972 that would indicate that you ever told the Grand Jury that the word Colombo was used as a threat to you in the trailer on June 5, 1972?

A No, ma'am.

Q I ask you again, was the word "Colombo" ever used to you by Mr. Merolla in the trailer on October -- excuse me, on June 5, 1972?

A Yes, ma'am, it was.

Q Well the, you testified incorrectly at the first trial, is that correct?

A No, ma'am, I did not.

Q How about in the Grand Jury, did you forget to put that part in in the Grand Jury?

A I did not, no, ma'am.

Q How about in your discussions with Agent McMullen, have you ever told Agent McMullen that that word was used in the trailer?

A I told him about about Colombo being used in my discussions.

MS. SELTZER: I would ask that Mr. McMullen, if he has any other report that might reflect that, produce it.

A I said at our discussions.

Q Did you ever tell him --

THE COURT: He cut away from the answer. The place in which the word was used is cut away.

Q Do you recall, did you ever tell anybody at anytime prior to telling this jury yesterday that word was used to you in the trailer on June 5?

A I do not recall, no.

Q Did you just recall the -- did you just remember yesterday that that happened when you were testifying?

A No, ma'am. That's the only reason I --

Q Did you remember at sometime before?

A I've known it --

Q Sometime between last June, perhaps, and today?

A That's the only reason I called Spatarella to verify who he was.

Q But you never testified to that, the use of that word before, have you?

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A I do not know, ma'am.

Q Have you seen any indication of it?

A No.

MR. RITCHIE: Objection, your Honor. He hasn't been shown all of his testimony.

THE COURT: I'm sorry, sir?

MR. RITCHIE: He has not been shown all of his testimony.

THE COURT: Yes.

BY MS. SELTZER:

Q Now, I believe you testified that when you left the trailer you went somewhere on June 5, is that correct?

A That is correct, ma'am.

Q Where did you go?

A Is that in the morning or the afternoon?

Q In the morning of June 5.

A I went to Chuckie's Charcoal Broil.

Q Where did you go from Chuckie's Charcoal Broil?

A To the Candle Light Diner.

Q Where did you go from the Candle Light Diner?

A To Len Al's office.

Q Where did you go from Len Al's office?

A Back to the trailer.

Q Where did you go from the trailer?

A To Mr. McNamaras office.

Q Do you know if that is the way that you have testified on all previous occasions?

A Yes, ma'am, it is.

Q You are certain of that?

A Yes, ma'am.

Q How about when you spoke to Agent McMullen? Did you tell Agent McMullen that you had gone back to the job site?

MR. RITCHIE: Objection, your Honor.

Well, I will withdraw the objection. May I note that that wasn't testimony.

Q Excuse me, by the job site I mean the trailer, is that synonymous? Would you say that --

THE COURT: The trailer was at the job site, wasn't it?

THE WITNESS: That is correct.

THE COURT: And you are not distinguishing between trailer and job site?

THE WITNESS: That is correct.

Q Did you ever tell Agent McMullen that you had gone back to the trailer or to the job site after you left

the Candle Light and the Len Al and then gone to the job site; did you tell that to Agent McMullen?

A I do not recall.

Q Well, I refer you to this same report made out by Agent McMullen.

On page 3 d you see any reference by you that you ever went from Len Al to the job site and then to McManara Buick?

A May I say something, Ma'am?

Q No. Answer the question.

THE COURT: You asked a question. You are not supposed to interrogate counsel.

THE WITNESS: The first --

Q Would you just read it and answer the question?

THE COURT: The question is --

A This was --

THE COURT: The question put to you is, Mr. Goberman, did you have such a talk as is reflected or purports to be reflected in that memorandum? And is it accurate, and is that what you said?

And if so, then, does it say what you are saying?

THE WITNESS: There is no mention made of

the trailer.

But this was only a 20-minute meeting the first time.

Q How about when you testified at the first trial, did you tell the jurors at that first trial that you had gone from the Candle Light to Len Al to the job site and then to McNamara's on June 5; did you say that to the -- to that other jury?

A I do not recall, ma'am.

Q If it happened, would you have told them?

A Of course I would have.

If I was asked specifically where I went, I would have.

Q On January 7, 1974 were you asked these questions and did you give these answers, page 291.

MR. RITCHIE: For the purposes of the record, it was not January 7.

MS. SELTZER: January 7, page 291.

THE COURT: It maybe two days were found on the one cover; I think that's the point.

MR. RITCHIE: It is January 8th, your Honor.

MS. SELTZER: I stand corrected. My volume says January 7th, I don't know which is correct. Page 291.

THE COURT: As long as we are in agreement on the page number it will be all right.

Q Were you asked these questions and did you give these answers?

"Question: Did you proceed directly to the job site?

"Answer: No.

"Question: Where did you go?

"Answer. I went to the office.

"Question: What office?

"Answer: Len Al Construction, my brother's office.

"Question: Which brother are you speaking about?

"Answer: Allan Goberman.

"Question: What did you do there?

"Answer: I asked my brother to take a ride with me to Port Jefferson.

"Question: Did you tell him why?

"Answer: No.

"Question: Did he go with you?

"Answer: Yes."

Ms. SELTZER: I stand corrected here, your Honor. At the first trial he did testify to that.

Q In the Grand Jury, did you testify that you went to the jobsite?

A I do not recall, ma'am.

Q I refer you to your Grand Jury minutes of October 11, pages 8 and 9. Is there anything in your Grand Jury testimony that would reflect that you went to the jobsite?

MR. RITCHIE: Your Honor, I am going to object to the relevance of that question. I would like to show your Honor the Grand Jury minutes.

THE COURT: Certainly.

I would think that the point of Mr. Ritchie's objection is that the succession of questions was not such as to give the witness a fair opportunity to put in any interim stop at the jobsite.

Would you look at the question and see -- I think you will see the point of his objection.

MS. SELTZER: My question was whether he ever told the Grand Jury that he had gone there.

THE COURT: I know. See, the real question is, were you asked any question before the Grand Jury which made it appropriate that you should tell the Grand Jury that in between the time when you left the Candlelight and the time when you got to the McNamara office you went to the jobsite.

MS. SELTZER: Could we have that question directed to the witness so that I don't have to repeat it?

THE WITNESS: I heard the question.

THE COURT: That wasn't a question.

A I was never asked that question in the Grand Jury.

Q Weren't you asked questions --

THE COURT: That is not quite it, you see, because the Grand Jury -- you don't have to be asked exactly the question which Government counsel wishes you to answer before the Grand Jury.

You are asked questions and you must fairly answer them and so it isn't quite correct to say that you just weren't asked.

The question is whether you were asked questions which fairly called for mentioning that.

BY MS. SELTZER:

Q Let me ask you this, Mr. Goberman, you recall testifying in the Grand Jury, don't you?

A Yes, ma'am, I do.

Q Do you recall that the questions that were asked to you at the Grand Jury were related to the interview that you had with Mr. McMullan?

A I don't --

MR. RITCHIE: Your Honor, I object. It calls for conclusions of the particular --

THE COURT: That same sequence of questions?

MS. SELTZER: My point is, your Honor, that if one reads his Grand Jury testimony, it is a direct follow-through of the report.

THE COURT: You mean, it was the script from which Government counsel worked?

MS. SELTZER: Yes, your Honor.

THE COURT: But he was not being asked, are the following the things that you told to Mr. McMullan, he was being asked directly this -- the jury has heard so much about it that perhaps you better simply read to them the questions and answers involved and see whether in their judgment they fairly called upon him to say that there was a stop at the jobsite.

BY MS. SELTZER:

Q Do you recall testifying before the Grand Jury?

A Yes, I do, ma'am.

Q Do you recall being asked these questions and giving these answers:

"Question: Was another meeting arranged for that day at 2 p.m. in McNamara's office?

"Answer: Yes, there was."

THE COURT: I think we are taking off from the Candlelight at that point, aren't we?

MS. SELTZER: Yes, your Honor.

THE COURT: In other words, the next preceding question and answer was about what occurred at the table in the Candlelight Restaurant, which was the second one that they had been to. Then came this next question.

Q "Answer: Yes, there was.

"Question: On your way to that meeting did you stop and pick up your brother?

"Answer: That's correct.

"Question: Did you ask your brother to come along with you?

"Answer: That's right.

"Question: What is your brother's name?

"Answer: Allan Goberman.

"Question: When you arrived in McNamara Buick, did you go upstairs to McNamara's office?

"Answer: Yes, I did."

There is no mention of --

THE COURT: Were those the questions you were asked and were those the answers you gave?

THE WITNESS: Yes. Those are the questions I was asked and those are the answers I gave.

Q Were those questions the result of the conversation that you had had with Agent McMullan and the other United States Attorneys?

MR. RITCHIE: Objection. Calls for a conclusion.

THE COURT: I think you have to ask Mr. Denis Dillon that.

Q Did you have discussions with the agents and with the U.S. Attorneys prior to your testifying before the Grand Jury?

THE COURT: I am afraid you are going to have to let the jury judge that. The questions that you heard to him, members of the jury, you have to judge whether or not they fairly called on him to say whether or not he had gone to the jobsite, so that his failure to say that in his answer to those questions was inconsistent with his having gone to the jobsite between the time he was at the Len-Al office and the time he was at the McNamara office with his brother.

Q I direct your attention to the question of a gun that you said was in existence on June the 5th. Where did

that gun come from?

A It went from Mr. DeLiso --

Q Where did it come from?

A I don't know where they got it from.

Q Where was that gun when you first saw it?

A In Mr. DeLiso's hand. It came out of a holster and went to Mr. Merolla.

Q That was on June 5, you say; is that correct?

A That's correct.

Q Do you recall ever speaking to Agent McMullan and telling Agent McMullan that that incident didn't occur on June 5 but occurred on June 28th?

A It happened on both Occasions, ma'am.

Q Did you tell Agent McMullan that in exactly the words that you just used relating to June 5, did you ever tell that to Agent McMullan, exactly those words?

A I do not recall the exact words that I said to Agent McMullan.

Q I refer you to your testimony at the first trial, page 685. Do you recall being asked these questions and giving these answers:

"Question: Did you tell Agent McMullan something on September 19, 1972..." I will go back further:

"Question: Did anyone from the Government ever ask you whether or not you were confined to your bed after this terrible beating on June 28th?

"Answer: I do not remember.

"Question: Did you tell Agent McMullan on September 19, 1972 that it was John DeLiso who drew the gun from the holster, did you tell him that?"

Were you asked those questions and did you give those answers?

MR. RITCHIE: We haven't got the answer to that.

MS. SELTZER: "Answer: That is correct, sir."

Do you recall being asked those questions and giving those answers?

A Yes, ma'am.

Q Was that in regard to June 5 or June 28th?

A It's in regard to the way you just read it.

Q When you said that, were you saying that that's what happened on June 5 or that is what happened on June 28th, or did exactly the same thing happen precisely -- using precisely the same words, on both days?

A I do not recall if it was precisely the same words both days.

Q Was it precisely the same actions on both days?

A No, they were in different locations.

Q Was it precisely the same motion?

A On June 5 I seen the gun come out of a holster. On June 23th I do not particularly remember a holster.

Q Do you recall telling this jury at any time that there was a holster involved?

A I do not recall, ma'am.

Q What was done with that gun?

A I do not know what they done with the gun.

Q Well, you say it was taken out.

THE COURT: During the incident, is that what you mean?

THE WITNESS: During the incident of June 5, Mr. DeLiso and Mr. Merolla got the gun and Mr. Merolla stuck the gun down my throat.

Q Will you describe how he got it down your throat.

A The barrel, an inch or two of it.

Q How did he get your mouth open?

A Ma'am, when you're looking at a gun, your're horrified.

Q Explain to us how he got the gun down your throat, did he jar open your mouth?

A No, ma'am, he didn't.

Q What did he do, did you open your mouth voluntarily?

A My mouth was open.

Q It was open?

A Yes, ma'am.

Q Why was it open?

A I would not know the reason why it was open.

Q Mr. Goberman, isn't it true that when you spoke to Agent McMullan shortly after the incident, you didn't tell him that the gun was stuck down your throat, you told him it was pointed to your face; it was only after that that you came up with this story about being stuck down your throat, isn't that true, Mr. Goberman?

A It was no story, ma'am.

MR. RITCHIE: Objection. Argumentative.

THE COURT: No. The question may be asked. Would you answer it, please, Mr. Goberman.

A I lost the question somewhere in between.

MR. SELTZER: Read the question, please.

(Record read.)

Q You told that to Agent McMullan right off the bat, that it was stuck down your throat, when you spoke to him the first time?

A I do not recall that, ma'am.

10 Goberman-cross/Seltzer

Q You are sure you are not lying about that, Mr. Goberman?

A I'm not lying about it.

Q I refer you to Agent McMullan's report, page 3, the last paragraph, the part underlined.

MR. RITCHIE: Which report, please?

MS. SELTZER: The report that I am referring to throughout.

THE COURT: The same one?

notes fol.

(Continued on next page.)

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MS. SELTZER: The same one.

CROSS-EXAMINATION

BY MS. SELTZER: (Cont.)

Q Did you read that, Mr. Goberman?

A Yes, ma'am.

Q Doesn't that report reflect that you told Agent McMullen the gun was stuck to your face, not down your throat?

A It was first put in my face and then down my throat. How else could they stick a gun at you?

Q Read the report, is there anything there that says it was stuck down your throat?

A No, ma'am.

Q Are you sure you didn't make that up sometime afterwards?

A No, ma'am, I didn't.

Q You just remembered it about a year later at the trial; is that correct?

A No, I've known it all along.

Q You just forgot to tell Agent McMullen, is that right? Is that right? You forgot to tell him?

A I would assume so, ma'am.

Q How long was this conversation that you had with Agent McMullen?

A It was a short conversation the first time.

Q How many other times did you speak to Agent McMullen?

A I would not know that, ma'am.

Q Can you give us an approximately between now --

THE COURT: I think that was done at an earlier stage, and it was agreed that there were a good many interviews.

MS. SELTZER: I would ask the Government if they have any other 302s that would reflect that it was stuck down his throat.

MR. RITCHIE: Your Honor, all 3500 material has been turned over to defense counsel.

THE COURT: I think -- does that cover all the 302s covering meetings with Mr. Goberman?

MR. RITCHIE: Yes, it does, your Honor.

BY MS. SELTZER:

Q Referring you to June 28th, how is it that you came to go to McNamara Buick on that day?

A I was told to go there.

Q Who told you to go there?

A Mr. Alphonse Merolla, Mr. John DeLiso, as I know him, Fat Nicky.

Q Had you arranged previously -- had you set up

an appointment to go there?

A No, ma'am.

Q When you walked into McNamara Buick, who was there?

A Rocco Merolla, Angelo Merolla and a short bit thereafter, John McNamara came in.

Q But you hadn't set up an appointment, had you?

A No, ma'am.

Q How did it happen that these people -- withdrawn.

At what time did you go -- did you first see the three people -- four people, whatever it was, that took you to McNamara Buick?

A Three people. Approximately 9:30 in the morning.

Q Did you just happen to bump into them?

A That's correct, ma'am. I was in the diner and they came in.

Q And it just happened that all these other people were waiting there for you in McNamara Buick?

A I assume it was prearranged by them.

Q Did you prearrange to meet these three people at the Pioneer Diner that morning?

A No, ma'am.

Q It was just a coincidence, wasn't it?

A I don't know if --

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MR. RITCHIE: Your Honor, this callsfor the conclusion of the defendant's mind.

THE COURT: It's withdrawn.

MS. SELTZER: Withdrawn.

BY MS. SELTZER:

Q Did you prearrange with these people --

THE COURT: He has said no.

Q And you didn't prearrange to meet the other people in McNamara Buick?

A No, ma'am.

Q Would you describe the room, Mr.Goberman, which you say this meeting was held in?

THE COURT: This is the 28th?

MS. SELTZER: Yes.

Q Was this an office?

A No, it was not. It was a living room. A living room of an apartment.

Q Isn't it afact that that living room is also an office?

A Not to my knowledge.

Q Was there anything in it indicating there was something about it that showed it was used as an office as well as an apartment?

A Not to my knowledge.

Q Do you recall the dimensions of the room?

A No, I don't. It was rectangular, that's all I know.

Q Was it bigger than this courtroom?

A No.

Q Was it smaller than the courtroom?

A Yes, ma'am.

Q How much smaller than the courtroom?

A Quite a bit smaller.

Q Could you give us an approximate, you told us that the other office was eight feet by fifteen feet; is that correct?

A I said, approximately.

Q Well, was this --

THE COURT: I think he said eight or nine.

MS. SELTZER: Excuse me. I stand corrected.

Q Was this living room smaller than or larger --

A Larger.

Q How much larger?

A I do not know.

Q Was it three times as large?

A No, ma'am.

Q How about four times as large.

A That would be a monstrous room.

Q Was it just a little bit larger?

A A little bit larger -- all right, I'd say a guess would be between 11 to 13 by 14 to 16.

Q Could you describe what was in that room?

A From what I had seen, living room furniture.

Q Were there any desks in there?

A I don't know, ma'am.

Q Any file cabinets?

A I do not know, ma'am.

Q Any drafting boards?

A I didn't see any.

Q Any chairs?

A I do not recall.

Q Any tables?

A I think there was a small table there.

Q How about lamps? Were there any floor lamps?

A I would not know, ma'am.

Q Do you recall what these people were doing that you said were sitting in that room?

A What they were doing?

Q When you entered the room?

A No, I don't recall.

Q Were they sitting or were they standing, do you recall?

A I don't recall that either.

Q I ask you to try to picture, if you can, to bring yourself back to June 28th and try to imagine yourself walking into this room.

Can you try to do that?

A Yes, ma'am.

Q Now, can you imagine walking through the doorway?

A Yes, ma'am.

Q Can you imagine seeing any people there or perhaps there weren't any people there?

A I seen people there when I came in.

Q Where were these people?

A The exact location they were in the room, ma'am, I don't know.

Q Do you have an image of the people being there, though; you are sure of that? Right?

A I'm very sure of it.

Q Do you remember if they were standing or if they were sitting?

A I don't remember, ma'am.

Q Do you remember if they were playing cards?

A I don't remember that either, ma'am.

Q Do you remember if they were reading newspapers?

A Ma'am, I do not remember.

Q How about drinking coffee, could they have been drinking coffee?

A I don't know.

Q You don't even know if they were standing or seated?

A That's correct, ma'am.

Q Do you remember if they were in front of the room or in the back of the room?

A If my memory serves me correctly, I seem to have recognized Rocco Merolla and he was towards the back and then there is another room, an entrance off to the right?

What that room is over there I just would not remember at this time.

Q What about the other people, where were they?

A Three other people came in with me. Exactly where Angelo Merolla is I do not remember.

Q Angelo Merolla is the gentleman who works there,isn't that correct?

A That's correct.

Q Are you sure you saw him in the room or was it possible that you saw him in the building?

A I seen him in the room.

Q How about the other MErollas, possibly you saw

them in the building, too, not in the room?

A It isn't possible. I seen them in the room, ma'am.

Q What did you do when you walked in, did you sit down?

A I could not tell you exactly what I did. I don't remember sitting at any time.

Q Well, did you stand the whole time?

A Yes, maam.

Q What period of time was it that you said you were in there?

A I would estimate 45 minutes, give or take 15 minutes one way or the other.

Q Were there any chairs or any sofas in there?

A I don't recall, ma'am.

Q Didn't you just tell us there was living room furniture in there?

A That's correct.

Q What did you mean by living room furniture?

A Like a living room.

Q What do you mean by that?

A A living room has like, I don't know, a sofa, a chair, but I just can't tell exactly what was there.

Q Was there -- were there chairs?

MR. RITCHIE: Objection, your Honor, asked and answered.

THE COURT: I think we have been over this, Ms. Seltzer.

Q During that entire period, did anybody ever sit down?

A I would not know, ma'am.

Q If you can, picture the situation. Were all five or six of you standing up during the whole period?

MR. RITCHIE: Objection, your Honor. She is calling for imagination rather than recollection.

THE COURT: Yes.

Q You say you were beaten up?

A That's correct, ma'am.

Q You say that all your clothes were taken off?

A That's correct, ma'am.

Q Can you describe how it came about that you lost all of your clothes?

A Because they claimed I was --

Q Describe it physically, who did what? Did you take them off?

A It was stipped off me because they thought I had a bug.

Q They tore them off?

A It was torn off.

Q What were you wearing that day?

A A brownish tweed suit, a tan shirt and brown tie.

Q You had a tie?

A That's correct.

Q You had shoes?

A That's correct.

Q And socks?

A Yes, ma'am.

Q Now, how did they get the jacket off?

A Took it off me.

Q Did they rip it off?

A It was just pulled off.

Q Who ripped it off?

MR. RITCHIE: Objection,your Honor. Assuming facts not in evidence.

Q What happened to your jacket?

A What happened?

Q Yes.

A It was taken off me.

Q By who?

A I cannot -- I don't remember exactly who did what.

Q Could you describe to us how your jacket got torn off, did someone hold your hands back or did somebody push you against the wall? How did they get your jacket off?

A I was --

Q How about your shirt, did you have buttons on your shirt?

A Yes, ma'am.

Q Was it a long-sleeved shirt?

A Yes, ma'am.

Q Did you have buttons on the sleeves or cuff links?

A Buttons on the sleeves.

Q Were the buttons torn off and was the front of the shirt torn off?

A The buttons were torn off.

Q What happened to the buttons?

A I wouldn't know.

Q Were there any buttons left on the shirt?

A Some were on, some were off.

Q Do you recall who it was that ripped these buttons and this shirt off of you?

A Ma'am, I don't.

Q Do you recall which article of clothing was

taken off of you first?

A My jacket.

Q And who took the jacket off?

A I don't recall, ma'am.

THE COURT: You've asked that and it's been answered.

Q What about your pants, did they take your pants off?

A Yes, ma'am.

Q How did they get your pants off, were you standing up while they took off your pants?

A Yes, I was.

Q Can you describe how they got your pants off while you were standing up?

A Just took them off.

Q Describe it.

A You take someone's belt off him --

Q Who?

A I cannot tell you which.

Q Do you have an idea?

A No, I don't.

Q How did they get the pants down from under your feet?

A Eventually I was knocked down on the ground

again.

Q I thought you said you were standing during this time?

A When they started taking the pants off, during the beating, I was on the ground a couple of times.

Q Is that when they got your pants off?

A No, ma'am.

Q How about your underwear? They got your underwear off, too?

A Yes, ma'am.

Q How did they do that?

A Taking it off.

Q Do you recall who it was that grabbed your underwear?

A No, ma'am, I don't.

Q How about your socks?

A Yes, they were.

Q They took your socks off, too?

A That's correct.

Q How did they get your socks off?

A By taking them.

Q Were you sitting down when they took your socks off, lying down or were you standing up?

A I cannot tell you if I was sitting down or

lying down.

Q How about your shoes, were there shoe laces on your shoes? Did somebody get down on their knees and untie your shoes and pull your socks off, or did you sit down in a chair when they did this?

Were they holding you back?

A At no time was I sitting down in a chair.

Q Mr. Goberman, are you telling me that this is the most detail that you can possibly give us a description of what happened?

A As far as the undressing, yes, ma'am.

Q How about your watch, did you have a watch on?

A I do not recall if I had a watch or not.

Q Do you usually wear a watch?

A The last two years, yes.

Q How about your tie, how did they get your tie off?

A By taking it off.

Q You have no idea who it was?

A No, ma'am, I don't. No.

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Q Now, were any of these clothes in any ruined or torn?

A Yes, ma'am.

Q Which ones?

A Shirt.

Q What else?

A That's all that I know of.

Q What about your pants? Were they torn at all?

A I do not think so, ma'am.

Q What about your jacket? Did you have buttons on the front of your jacket? Was it closed?

A Yes.

Q Did they tear those, too?

A I usually don't button my jacket, ma'am.

Q How did you get these clothes back on?

A By putting them on.

Q Do you recall doing that?

A Yes, ma'am.

Q When was it that you put your clothes back on?

A After they searched me and searched all of the things that were in my pants and jacket.

Q Did they tell you you can put your clothes back on?

A Yes.

Q Did they help you put your clothes back on?

A Yes.

Q Did you sit down when you put your shoes and socks on, or did you not?

A I don't know if I was sitting or standing or lying down. After I got dressed, I must have been standing.

Q Now, when you left that room after you put your clothes back on, did you see anybody as you were exiting?

A Yes, I did.

Q Who did you see?

A John De Liso accompanied me downstairs.

Q He was outside?

A He accompanied me downstairs to the door at the bottom of the corridor, the stairs that lead down that corridor. From there, I got into a cab and left.

Q Did you see anyone else who worked in the office?

A No.

Q Did you see Dorothy Tomaselli, perhaps?

A No.

Q Did you see any customers?

A No, ma'am, I did not.

Q Is McNamara Buick a busy place?

A Yes and no. It's all according to what time of day.

Q What time did this alleged beating --

A A Approximately in the area of around 11:00 in the morning. The beating itself was before 11:00. When I left there, it was approximately 11:00.

Q Was that during business hours?

A Yes, ma'am.

Q If you know, who was at McNamara Buick during business hours?

A I would not know that.

Q Did you see any secretaries?

A Yes.

Q About how many, if you know.

A No, I do not know.

Q Did they have more than one secretary?

A I do not know.

Q You already said you did not see this Dotty. Anyone else?

A That's right.

Q Or any typists or clerks that you ever saw?

A I do not know.

Q You never saw anyone else doing clerical work?

A Not that I paid attention to.

Q How many salesmen were there in McNamara Buick?

A I do not know.

Q Were there four?

A I do not know how many there are.

Q More than four?

A Ma'am, I said I do not know how many there are.

Q Did you ever meet any salesmen?

A Yes, I did.

Q How many did you meet?

A Three that I know.

Q Who is that?

A Alan Genowski, Danny Gallota and Angelo Merolla.

Q Do you know if there were any other salesmen that you hadn't met, or hadn't been introduced?

A I assume so, but I do not know.

Q Let me ask you this, Mr. Goberman. Was McNamara Buick place? Was it a big showroom, or just a little place?

A It's according to what you consider big.

Q What would you consider big?

A As far as new car rooms go today, I would consider it, personally, on the small side.

Q Well, would you say there were more than twenty people working there?

A I would not have the slightest idea.

Q Would you say there were approximately at least twenty people working there?

A I do not have the slightest idea.

Q You said they had a service area; is that correct?

A That's correct.

Q People working there, too?

A I assume so.

Q When you were there, it was during business hours, wasn't it?

A Yes.

Q Did you scream during this beating?

A I do not believe so.

Q Did you say anything during this beating?

A I said words, but I cannot recall those words.

Q Did you make any cry for help during this beating?

A What good would that do?

Q That's not my question.

THE COURT: No. You weren't asked what good it would do.

THE WITNESS: No, ma'am.

Q When you went out, did anyone come up to you and say, "Hey, what happened to you?"

A No, ma'am.

Q Did you look disheveled when you left McNamara Buick that day? Do you know what disheveled means?

A Yes.

Q Did you look disheveled that day?

A From more than ten feet away, I would say, no, because I was fully dressed again.

Q Well, you say you lost all the buttons on your shirt, right?

A I said I lost some of them.

Q How many?

A I would not know.

Q Did you lose the top buttons?

A I said some of the buttons were gone, and I cannot tell you how many.

Q Let me ask you this. Did you put your tie back on when you left that day?

A I do not know.

Q Well, do you recall what you did with your tie?

A No, I do not recall.

Q You said if you were closer than ten feet it would appear to somebody that you did look disheveled, is that correct?

A No.

Q What did you say?

A Closer to ten.

Q Close. Say, as close as I am to Mr. Ritchie? If I was looking at Mr. Ritchie, and he was disheveled, would I be able to see it from here?

A Yes, you would.

Q Okay. Now, you got into a cab, didn't you?

A That's correct.

Q Did the cab driver say anything to you about, "Hey, what happened to you?"

A No, ma'am.

Q How close were you to the cab driver?

A He wasn't looking at me. He was looking at the road. I was sitting in the back.

Q Did you ever pay him?

A Yes.

Q Did he look at you then?

A I assume he did.

Q Did he say anything to you?

A No, ma'am, he did not.

Q Did your hair get messed up that day, or did you have a chance to comb it before you left?

A I just probably brushed it back with my hands.

Q Now, from McNamara Buick you went to the Pioneer Diner, right?

A That's correct.

Q From the Pioneer Diner, you got into your car and left; is that correct?

A That's correct.

Q How much later than that was it that these two

policemen stopped you?

A Two to three minutes.

Q Were you still disheveled at that time?

A May I --

Q Were you still disheveled at that time?

A We may have differences of opinion of what dishevelment is.

Q I will rephrase the question.

Did your appearance change between the time you saw the Police Officers and the time you left McNamara Buick?

A No, it did not.

Q How close did you get to the Police Officers?

A Two feet.

Q As close as I am to Mr. Ritchie?

A Yes.

Q Did you go into the Police Officers' car?

A Yes.

Q Did the Police take you down to the station?

A Yes, they did.

Q Did you tell the Police Officers you had just been beaten up?

A They asked me what happened, and I said I walked into a wall. And that was the end of it.

Q Walked into a wall.

Do you know if they wrote up any kind of -- Withdrawn.

When you went to the Police Station, what happened?

A I went downstairs.

Q Did they take any pictures of you, any mug shots?

A No, they did not.

Q Did they write up any reports?

A To my knowledge, no.

Q What did they do?

A They released me as soon as my attorney came.

Q Why did they have to wait until your attorney came? Were you under arrest?

MR. RITCHIE: Objection, your Honor. It calls for the conclusion of the Policemen's minds.

THE COURT: What they did, whether they had a reason to or not.

MS. SELTZER: Your Honor, would this be a good time to stop, or would you like me to go on?

THE COURT: I don't seem to see the 4:30 lawyer. Oh, yes, I do. It's a good time to stop.

Please do not discuss the case with one another, or anyone not on the jury until it is given to you to decide. 10:00 o'clock tomorrow.

(Whereupon, an adjournment was taken to Friday, October 11, 1974, at 10:00 o'clock A.M.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 73-CR-442

JOHN DE LISO, THOMAS MC NAMARA, ALPHONSE MEROLLA and ALPHONSE M. MEROLLA, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 11, 1974

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

HENRY SHAPIRO
OFFICIAL COURT REPORTER

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Appearances:

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for the Eastern District of New York

BY: DAVID RITCHIE, ESQ.
-and-
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MS. MARION SELTZER
LEGAL AID SOCIETY
Attorney for Defendant A.M. Merolla

JOHN LEONE, ESQ.
Attorney for Defendant A. Merolla

Also present:

RICHARD MC MULLEN
Special Agent, Federal Bureau of Investigation

MR. RITCHIE: Good morning, your Honor.

THE COURT: I think you wanted to inquire, Mr. Meiselman?

MR. RITCHIE: I believe Mr. Meiselman -- this is on the subpoena that you issued to Mr. Goberman.

MR. MEISELMAN: Yes, sir.

MR. RITCHIE: Mr. Goberman has the records that he has available, as well as the license that the Court directed be produced on the request by Mr. Gillen.

Mr. Goberman has expressed to me concern about these records, since they are the only records that he has. I would request that some procedure be implemented that would protect both the right of the defendants to a private examination and Mr. Goberman's right to the security of the records. I request that that be discussed at this time.

THE COURT: I do not know what the problem is.

MR. RITCHIE: They are the only records that he has.

THE COURT: Nobody is talking about depriving him of the records.

MR. RITCHIE: Yes, your Honor.

I would imagine Mr. Meiselman would like an opportunity to look at them in private.

MR. MEISELMAN: You could be present, if you wish.

MR. RITCHIE: Fine.

MR. MEISELMAN: I have no objection to that.

THE COURT: All right.

MR. RITCHIE: You'd have no objection to Mr. Goberman's presence?

MR. MEISELMAN: Yes, I would.

MR. RITCHIE: Would you have opposition to my being present with Mr. Meiselman?

THE WITNESS: No.

MR. RITCHIE: Mr. Goberman stated that he would allow me --

THE COURT: To be the custodian of them.

MR. RITCHIE: -- and he will stay out.

THE COURT: Very well.

MR. RITCHIE: Instead of having the jury come out now, I have available some 3500 material on the next witness.

I informed Mr. Fischetti last night that the Government intends to call Gary Taibbi as its next witness. After speaking to him and after telling me he owuld not be available until the afternoon because of a doctor's appointment -- he is suffering from a neck injury -- Mr. McMullen last night got hold of

Alex Gniazdowski, a notary who was involved in this case. He will be the next Government witness. He will be here at 11:00.

I have available his 3500 material, grand jury testimony and a very short piece of 302, report of interview on last Thursday between myself, Miss Katz, Agent McMullen and Mr. Gniazdowski in Port Jefferson.

Agent McMullen has preserved his original notes. I do not have them now. He is going to pick up Mr. Taibbi and drive him in.

If Mr. Gniazdowski is off the stand at lunch-time and if cross-examination has finished, I would just ask that he be allowed to come back at 2:00 o'clock if defense counsel chooses to examine him.

THE COURT: We will do the best we can.

MR. RITCHIE: Yes, your Honor.

One-page report of interview, dated 4/18/73 regarding Alex Gniazdowski --

THE COURT: What is his first name?

MR. RITCHIE: Alex.

THE CLERK: Now 3500-8.

MR. RITCHIE: Grand jury minutes dated April 18, 1973 regarding witness Alex Gniazdowski --

THE CLERK: Now 3500-9.

MR. RITCHIE: I have just received Gary Taibbi's 3500 material. I will give it to defense counsel at the noon recess, but I will have it marked afterwards.

THE COURT: Very well.

(Jury present)

H A R O L D G O B E R M A N , having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: Good morning.

MS. SELTZER: May I continue?

THE COURT: Yes.

CROSS-EXAMINATION

BY MS. SELTZER: (Cont.)

Q Mr. Goberman, are you presently employed?

A Yes, I am.

Q Where are you presently employed?

A National Craft.

Q What do you do for National Craft?

A Measure, estimating and selling.

Q How long have you been working there?

A Approximately about six weeks.

Q And do you use any type of license -- do you need any type of license for that job?

A Yes, I do.

Q Which license is that?

A Home improvement sales license, City of New York.

Q Is that the license that you mentioned last week -- a few days ago?

A Yes.

Q Did you go home and find that license?

A Yes, I did.

Q Do you have it with you?

A Yes.

Q May I see it?

A Yes, you may.

MR. GILLEN: Excuse us for one moment, please?

(Pause)

Q Mr. Goberman, do you have any other identification on you at this time?

A No, I do not.

Q You do not have any business cards?

A No, I do not.

Q Do you have anything that supposing you were to be hit by a car crossing the street, that they would know who you are?

A No, I do not.

Q You do not even have a little card in your wallet as to your name and address?

A I have no wallet.

Q Did you have any identification on you yesterday?

A No, ma'am.

Q How about the day before yesterday?

A No, I did not.

Q Do you have any credit cards on you?

A No.

Q Is it your normal procedure to carry absolutely no identification of any sort on you?

A Yes.

MR. RITCHIE: Objection, irrelevant.

THE COURT: Yes.

We are going very far afield.

Q Mr. Goberman, are you married?

A No, I am not.

Q You are divorced?

A That is correct, ma'am.

Q You told us that you had been married twice; is that correct?

A Correct.

MR. RITCHIE: Objection, irrelevant.

THE COURT: Yes, that has been gone into in the record.

Q Do you pay alimony?

A Yes, I do.

Q To whom do you pay alimony --

MR. RITCHIE: Objection, irrelevant.

THE COURT: This is far afield as to where we are.

Q Mr. Goberman, you told us yesterday that you had business dealings with Al Merolla between the dates of June 5th and June 28, 1972?

Did those business dealings have anything to do with the McNamaras?

A No, it did not.

Q Referring you back to these alleged meetings at the McNamara office, you told us that there was a gun present.

Are you sure that gun didn't come from your person and not from the person of one of the other people whom you say were present?

A Yes.

Q You are absolutely certain?

A Yes.

Q You are absolutely certain a gun was present on both occasions?

A That is correct, ma'am.

Q Were you ever arrested for having a gun in your automobile?

A Yes, I was.

Q When was that?

MR. RITCHIE: I am going to object to that and ask that it be stricken.

THE COURT: Well, I think he has already answered in the affirmative.

MR. RITCHIE: Yes, your Honor.

Q The time that you were arrested of possessing a gun, did you tell the police that it wasn't in fact your gun?

MR. RITCHIE: Objection, your Honor.

THE COURT: Yes, you are going very far from this.

Q Mr. Goberman, are you a paid police informant?

A No.

Q Have you ever been a paid police informant?

A No, sir.

Q Have you ever committed perjury?

A No, I have never committed perjury.

Q Have you ever been indicted for perjury?

A No, I have never been indicted for perjury.

Q Have you committed perjury at this trial?

A No, I have not, ma'am.

Q Did you ever assault a process server?

MR. RITCHIE: Objection as irrelevant.

THE COURT: Really, we have been over so many of these topics.

MS. SELTZER: I do not believe we have been over this.

THE COURT: I do not think it has anything to do with his credibility.

MS. SELTZER: Your Honor, could I have a ruling?

THE COURT: Objection to the question is sustained.

Q Mr. Goberman, after this supposed meeting of June 5th, did you go to a doctor?

A No, I did not, ma'am.

Q Could you describe what your wounds were -- or whatever you want to call them -- were on June 5th?

A It was just a beating, nothing I would say serious where you were cut or had a broken arm or leg.

Q Was there anything physical in any way?

A I really do not recall.

Q You say your brother Allan Goberman was with you on June 5th?

A Correct, ma'am.

Q Was he present during this beating?

A I do not recall. He was asked to leave the room or told to leave the room.

Q When you left McNamara Buick on June 5th, you left with your brother Allan, didn't you?

A Correct, ma'am.

Q Did you tell him that you had been beaten?

A I do not recall, ma'am.

Q Well, to the best of your recollection, did you tell your brother Allan -- were you upset about it at the time?

A Well, he knew about it.

Q How do you think he knew about it?

A Because he told me he had heard the commotion.

Q Did you tell your brother Allan that you had been beaten inside that room?

A He had known about it.

Q Did you ever tell your brother that you had been beaten?

A We both knew it --

Q Did you --

A I do not recall if I told him. He knew because he heard everything.

Q Did you ever say anything to him?

THE COURT: He has answered no.

Q Did you ever give him any description of what had gone on in the room?

A As a description, I do not think so.

Q Would you describe to us what your state of mind was on June 5th, after this supposed beating?

A Right after that I was scared. That's why I signed those documents, registration and the check.

Q Were you scared the same thing might happen agai

A That is correct.

Q What did you do on June 6th?

A I cannot tell you that.

Q Did you go back to work?

A I assume I did.

Q Did you continue on the job?

A Yes, I did.

Q Did you have continued contact with the McNamaras?

A Yes, I did.

Q Did you change your modus operandi in any way with regard to the McNamaras after June 5th?

A No, I did not.

Q You were having serious problems with that building -- the building of that building, weren't you?

A In my opinion, no.

Q Let me ask you this:

You originally made the bid for the building; is that correct?

MR. RITCHIE: Objection, your Honor, irrelevant.

THE COURT: What is that?

MS. SELTZER: I asked him if he had originally made a bid.

THE COURT: For the job?

MS. SELTZER: Yes.

THE COURT: It is in evidence, isn't it?

MR. RITCHIE: Yes, your Honor. I am sorry.

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CROSS-EXAMINATION

BY MS. SELTZER: (Cont.)

Q Now, at the time of June 5th or shortly thereafter, were you beginning to realize that perhaps your bid was too low?

A It was not too low.

Q Were you having problems paying the contractors?

A No, I was not.--

MR. RITCHIE: I will object to this entire line of questioning as outside the scope of your Honor's prior ruling.

THE COURT: I do not quite see where we are going.

MS. SELTZER: I am trying to make a point.

THE COURT: All right.

Q Were you paying the subcontractors regularly at that time?

A Yes, I was.

Q There were no problems with any of the subcontractors?

A Correct.

Q Was the building going up according to schedule?

A According to my schedule, yes.

Q What about the original schedule that had been

arranged?

A It was just the completion date given. You just don't set day for day what is going to be done, you just give a completion date of approximately.

Q During this entire period of June 5th, you were in fear of the McNamara's, is that correct, and others?

A I have to answer it my way. Yes and no.

Q Weren't you scared they were going to kill you?

A After the first week, it just reminded me of something you see in the movies, which is too unreal.

Q Mr. Goberman, you knew that these people would have liked to terminate their contractural relationship with you; is that not correct?

A That is not correct.

Q If you were so fearful of them, of getting killed, why did you continue working on that construction site?

A Because the contract -- if everybody knew about the beating, I figured nobody would kill me because everybody knew.

Q You said there was another beating on June 28th?

A Yes.

Q Was that beating more severe?

A Yes.

Q Wa s there anything visible outside of your body

after the June 28th beating that was different from the June 5th one?

A Yes.

Q What was that?

A If you would read the doctor's letter --

Q Answer my question.

Was there anything visible on the outside of your body on June 28th?

A Yes.

Q What?

A Whatever -- I do not know the terminology -- the doctor didn't explain it to me -- they are bruises.

Q Do you know what a blauk eye is?

A Yes.

Q Did youhave a black eye?

A No.

Q Do you know what a swollen lip is?

A Yes.

Q Did you have a swollen lip --

MR. RITCHIE: Objection, your Honor.

THE COURT: I think we have been all over this.

Q Mr. Goberman, when did you cease doing work on that job site?

A As far as technically or physically?

Q When did you stop work on the job site?

A As far as technically, written, ma'am?

Q Physically.

A I'd say approximately June the 24th when I still had someone on the payroll -- up until sometime the 1st or 2nd week of July.

Q You told us that you have a civil suit pending in this matter; is that correct?

A Correct.

Q When did you first decide to institute this civil suit?

A I cannot tell you the date. I do not know.

Q Could you give us a month?

A No, I cannot even do that.

Q Well, the alleged beating occurred on June 8th, 1972, correct?

MR. RITCHIE: Objection.

Q Excuse me, June 5th and June 28th; is that right?

A June 5th and June 28th, ma'am.

Q June 5th and June 28th; is that right?

A Correct.

Q Was it in July that you first went to see this lawyer?

A I cannot tell you that.

Q Could you approximate within a period of six months?

A I could tell you the first time I spoke to the attorney was -- that would be in August of 1972.

Q That was approximately two months later?

A Approximately a month later.

Q Approximately a month later.

Now, you say you went to see this doctor Punturo after June 28th or on June 28th?

A Correct.

Q When you went to the doctor, did you have in your mind that you were going to institute this civil suit?

A No, ma'am.

Q Why did you go to Dr. Punturo rather than to the Smithtown General Hospital?

A Because I was afraid at the time because they warned me not to go to the D.A. or police. I wanted to go to somebody privately and I told them it was due to an incident.

Q Is Smithtown General Hospital the D.A. or police?

A I was afraid that there would be an official report. I didn't want it to go any further.

Q Smithtown General Hospital was right near where you were at that time?

A correct.

MR. RITCHIE: Objection, asked and answered.

THE COURT: Yes.

Q Have you ever heard of Dr. Punturo before?

A No.

Q Had he been recommended to you by anyone?

A No, he was not.

Q You decided to go to him?

A Yes.

Q And you had no idea that you were going to institute a civil action?

A Correct.

Q Did you have discussion with your lawyer the damages that you suffered during the course of the civil action or the institution of this civil action --

MR. RITCHIE: Objection, your Honor, calls for a confidential communication.

THE COURT: Well, he has the right to waive his privilege.

MR. RITCHIE: Sorry, your Honor.

Q Did you discuss at any time damages that you had suffered with your civil lawyer?

A Yes, I did.

Q When was that?

A I cannot tell you. I do not recall.

Q As a result of your discussion with him, is that how he got the million and a half dollar figure that you are now suing these individuals for?

A I would assume so.

Q He didn't pick a million and a half dollars out of the sky?

A He was the one that got the figure.

Q He got that after discussing the case with you?

A I didn't make no figures. That was up to the attorney.

Q You told him what your damages were?

A Yes, I did.

Q Could you give us some idea about what those damages are -- are you suing for pain and suffering?

A One is breach of contract, one is the damages and the other is assault.

Q Do you know how much this pain and suffering that you endured on these dates is worth -- do you know what you are claiming for that?

A Yes, the attorney is claiming a quarter of a million on the assault.

Q Do you know how much you're claiming on the contract?

A One million and the balance --

Q The contract wasn't for a million dollars, was it?

A As I said, part of the damages is one million, and the balance is the contract.

Q Are you suing for any other items?

A No, I am not.

Q How about chauffeur services, are you suing for chauffeur services?

A I do not know what the attorney has in those papers.

Q Did you ever claim that you were confined to bed after June 28th?

A I do not recall.

Q Did you ever claim that you needed a chauffeur to drive you around for a few weeks after June 28th?

A I do not recall, ma'am.

Q Did you claim in your suit against these people for a million and some-odd dollars so that you needed -- that you wanted to collect money for a chauffeur?

A I assume I did.

Q Well, did you or didn't you?

A I do not recall, ma'am.

Q You said you assume you did.

Why do you assume you did?

A Because the day of the beating, I wasn't in any

condition to drive. I had my wife drive.

Q Did you have a chauffeur for several weeks after this supposed beating?

A I do not recall.

Q Would you try?

A The only day positive is the day of the beating, because I could not drive.

Q Weren't you claiming several weeks of chauffeur services in your claim?

A I don't know, ma'am.

Q Isn't it true that you previously testified that you paid your wife -- you wanted collection for some $150 a week for two weeks chauffeur services for your wife -- didn't you previously testify to that?

A I do not recall.

Q Well, think about it --

A I cannot recall, ma'am.

MS. SELTZER: Could I have one moment, please?

THE COURT: Yes.

(Pause.)

MS. SELTZER: At this time I would request that the license in the name of Harold Goldman be marked as a defendant's exhibit in evidence.

THE COURT: Would you show it to Mr. Ritchie.

MR. RITCHIE: Your Honor -

THE COURT: Is this the one that Mr. Goberman produced here this morning?

MS. SELTZER: Yes.

MR. RITCHIE: Could we perhaps have a duplicate made?

THE COURT: Yes, could you put the exhibit mark on an envelope?

THE CLERK: Yes, your Honor.

Now Alphonse M. Merolla's exhibit AH in evidence.

(So marked.)

BY MS. SELTZER:

Q Mr. Goberman, I show you this bill of particulars from your civil action for a million and a half dollars. I ask you to read point 12 of your bill of particulars.

MR. RITCHIE: Objection, your Honor, unless we have it identified as an exhibit.

MR. MEISELMAN: It has already been identified.

MR. RITCHIE: Is it in evidence?

MS. SELTZER: Defendant's exhibit V in evidence.

MR. RITCHIE: I'd ask that the whole document be read.

THE COURT: If the jury has the time for it.

MS. SELTZER: The other parts aren't relevant as

far as the cross-examination is concerned.

THE COURT: At a later time you can see it is read.

Mr. Ritchie's point is, if it was worth marking in, the jury should know about it.

MR. GILLEN: Excuse me, your Honor.

(Pause.)

MS. SELTZER: Mr. Goberman, does this say "Medical expenses approximately, $25, chauffeur services $150 per week for two weeks, equalling $350, also replacement of one suit $150?"

Are you requesting to be compensated for those damages?

THE WITNESS: If that is what is written there, yes.

BY MS. SELTZER:

Q Who did you say your chauffeur was?

A I do not know if I ever said who.

Q Didn't you say your wife?

A The first day, yes.

Q Isn't that what you testified to here, previously?

A That is correct.

Q Was your chauffeur your wife?

A The first day of June 28th, yes.

Q Did you have any other chauffeur?

A I do not recall.

Q Do you recall testifying that the chauffeur that was being paid $150 per week for two weeks -- do you recall testifying at a previous occasion -- did you say that was your wife?

MR. RITCHIE: Objection, asked and answered.

THE COURT: Yes.

Q What about this replacement of one suit?

What suit was this that was supposedly ruined?

A The suit -- the suit I was wearing on June 28th.

Q June 28th.

Can you describe -- was this the suit that was allegedly stripped off you?

A That is correct, ma'am.

Q What would you want with the suit -- what happened to it?

A I do not recall at the present time.

Q Well, if you were collecting or requesting collection of $150 on that suit, is that the original purchase price of the suit?

A Yes, ma'am.

Q Would that indicate to you that you are claiming that your suit was ruined?

A I would assume so.

Q Was your suit ruined on June 28th?

A Yes, it was.

Q You didn't tell us that yesterday, did you?

A No, I assume I did not.

Q Do you recall what you told us yesterday?

A To me it was -- there was some tears in it and I should replace it.

Q You didn't tell us that yesterday, did you?

A No, I didnot.

Q Where was the slight tear?

A Underneath the right arm.

Q Did you ever hear of a tailor?

A Yes, I did.

Q What do tailors do?

A Pardon me?

Q What do tailors do?

A Make clothing and repair clothing.

Q You wanted $150 to replace the whole suit --

THE COURT: Move along.

Q Was there anything wrong with the pants of that suit?

A I do not know.

Q Did you tell us yesterday that there was anything

with the pants of that suit?

A I do not recall, ma'am.

Q Was there anything wrong --

A I do not recall.

Q Mr. Goberman, I believe that you testified yesterday, and if I could quote you you said, "I do not lie in the Courtroom --"

MR. RITCHIE: What page?

MS. SELTZER: I do not have it by page.

THE COURT: Ask the question you need ask, if you will please.

Q Did you tell us yesterday "I do not --"

THE COURT: The jury will have to remember that. What is the question that you are coming to?

Q Well, is it true when you say "I do not lie in a Courtroom --"

A That is correct, ma'am.

Q Have you ever lied in a Courtroom?

A No, I have not, ma'am.

Q Mr. Goberman, what is a lie --

MR. RITCHIE: Objection, your Honor.

THE COURT: I am sure that he uses the term in the usual sense.

Do you use it in any other sense, Mr. Goberman?

MR. RITCHIE: Objection.

THE COURT: Please, move on. We have no time for argument really.

BY MS. SELTZER:

Q Mr. Goberman, did you lie on January 7th at a previous proceeding in this Courtroom?

MR. RITCHIE: Objection, your Honor. The witness didn't testify on January 7th.

MS. SELTZER: January 8th, 1974 in this Courtroom when you said that you only had three previous aliases -- did you lie when you said that?

THE WITNESS: At that time that was the only ones that I could recall.

Q Mr. Goberman, did you lie when you said that?

A No, I did not. Those are the only ones that I recalled in my memory at the time.

Q Mr. Goberman, did you lie on January 8th, 1974 when you said in this Courtroom that you ceased using aliases?

A Yes, I did not lie and I was under the impression at that time that the name Masterson -- that the pilot's license was not an alias.

Q Did you lie in this Courtroom on January 8th, 1974 when you said that you had never used the name Lambert Russ?

A I did not lie because I did not recall the name at the time.

I was only reminded of it after January 8th.

Q Mr. Goberman, did you lie at the murder trial when you said you had nothing to do with the murder of Mr. Silver?

MR. RITCHIE: Objection, your Honor.

THE COURT: The subject is totally closed by agreement among counsel which led to the reading of the summary of his testimony in that case.

(Continued on next page.)

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CROSS-EXAMINATION

BY MS. SELTZER (Cont'd.)

Q Mr. Goberman, were you lying yesterday when you told us that you had never told a psychiatrist that you had conversations with animals?

A That's correct, I was not lying.

Q What would you refer to that statement as, if it is not a lie?

MR. RITCHIE: Objection, your Honor.

Q Would you refer to that statement as the truth?

MR. RITCHIE: You should --

THE COURT: Please move on to whatever it is you want to get to.

Q Mr. Goberman, on January 10, 1974, Page 542 of this transcript, in this courtroom, were you asked these questions -- were you present during this colloquy:

"Mr. Gillen: Your Honor, there are just, from scanning this, and I just got it --"

THE COURT: Wait a minute, if this is not anything that the man said --

MS. SELTZER: It is, your Honor.

THE COURT: Are you sure this is something the witness said?

MS. SELTZER: I'm sure, your Honor.

THE COURT: Very well.

"MS. SELTZER: Mr. Gillen, your Honor, there are just, from scanning this, and I just got it a few minues ago, I think there are allegations in there that he talks to animals and things of this nature, is that correct, Mr. Frischetti"?

MR. RITCHIE: Your Honor, objection, I would ask your Honor to take a look at this (handing to the Court).

MS. SELTZER: Your Honor, I am referring to Lines 18 through 21, Page 542.

THE COURT: The question of whether or not he was adopting what was said at Lines 15 through 19 is too doubtful to permit it to be read in evidence or argued about further.

Next question.

BY MS. SELTZER:

Q Did you testify on January 10, 1974 in this courtroom and were you asked these question and did you give these answers, Page 590:

"Question: All right. Didn't you claim here that you hired a chauffeur, chauffeur service, $150 per week for two weeks for a total of three hundred some odd dollars, didn't you claim that?

"Answer: That's right.

"Question: Did you hire a chauffeur and pay three hundred some odd dollars to drive you around for two weeks, did you?

"Answer: Yes, sir.

"Question: By check or cash?

"Answer: I don't remember.

"Question: Who was the chauffeur?

"Answer: My wife.

"Question: Your wife was the chauffeur?

"Answer: That's right."

Mr. Goberman, were you asked those questions and did you give those answers?

A Yes.

Q Mr. Goberman, were you lying when you just gave your answers to me before?

A As I said before, I don't recall, madam.

Q You recall that your wife was the chauffeur the first day but you don't recall that your wife was the chauffeur the other days?

A That's correct, madam

Q Mr. Goberman, do you recall, if it is January 8th, I stand corrected, this transcript says January 7th. Page --

THE COURT: I don't know the explanation for

that. Maybe the page from the previous day got stuck on there.

Q Do you recall testifying in this courtroom and being asked these questions on January 7th or 8th, '74 --

THE COURT: Page?

MS. SELTZER: Pages 336 and 337:

"Question: Mr.Goberman, you told us you stopped using the aliases Master Slade and Masters in 1973 through '72, isn't that correct?

"Answer: That's correct.

"Question: So you were using your aliases, at least up until October of 1973?

"Answer: That's right. As far as my driver's license."

Question on Page 337:

"Question: You told us three aliases, Slade, Masters and Masterson, right?

"Answer: That's correct.

"Question: Have you ever used any others?

"Answer: Not to my knowledge."

Were you lying when you said that?

MR. RITCHIE: Objection, unless -- I think continued reading would develop this further, your Honor.

THE COURT: Yes, if that is not his testimony

on the point, you must continue until the testimony on that point is completed.

MS. SELTZER: Then we went through a colloquy that was similar to what Mr. Gillen went through --

MR. RITCHIE: There is no colloquy for the rest of that page, it's question and answer. There are questions and answers on the balance of that page, not colloquy.

MS. SELTZER: From my recollection, your Honor, Mr. Goberman was then brought to realize that he wasn't correct.

THE COURT: I can't hear you.

MS. SELTZER: I say the conversation thereafter is showing Mr. Goberman that he was wrong when he said he hadn't used other aliases. I can read you the whole thing. It goes through the Bat Masterson and the Slade --

THE COURT: Counsel says, unless you do the material thus far presented to the jury will produce the wrong impression. Is that right, Mr. Ritchie?

MR. RITCHIE: Yes, your Honor.

MS. SELTZER: How much would you want me to read? This is extensive cross-examination.

THE COURT: Please, proceed. I'll give you

a signal, perhaps.

MS. SELTZER: It goes on for pages and pages.

THE COURT: Will you read, Mr. Ritchie, the part that you regard as materially qualifying what Ms. Seltzer has read.

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MR. RITCHIE: I will be brief, your Honor.

Question: Have you ever used any others?

"Answer: Not to my knowledge."

That was the last of the questions.

"Question: What do you mean not to your knowledge?

"Answer: Not that I remember.

"Question: You mean as you sit here now you can't remember what names you have used?

"Answer: There were -- those were the only names to my knowledge that I have used and do remember.

"Question: And do remember? You mean there may be more?

"Answer: Not to my knowledge.

"Question: And what about Russel Lambert?

"Answer, Yes, I did use that name."

MS. SELTZER: It goes on.

MR. RITCHIE: I'm trying to be brief. I will continue if your Honor wishes --

MS. SELTZER: If you find it relevant, I have no objection to you reading it.

MR. RITCHIE: I believe that that establishes --

THE COURT: Yes, I think the jury perhaps is familiar with the rest of that testimony.

BY MS. SELTZER:

Q So you sit here and tell us today that you have never committed perjury; is that correct?

A That's correct, ma'am.

Q Do you have any fear of being indicted for perjury?

A Yes, I do, ma'am.

Q By whom?

A By whom?

Q Yes.

A If I was to tell a lie, I'd be indicted by this Court or the attorney's office, whatever it is.

Q Were you indicted for perjury between the time you testified here last January and today?

A No, because I didn't commit perjury.

MS. SELTZER: I have no further questions.

THE COURT: Mr. Leone or Mr. Fischetti?

MR. LEONE: I will go first. I will be brief.

THE COURT: Very well.

CROSS-EXAMINATION

BY MR. LEONE:

Q Mr. Goberman, my name is John Leone and I represent Alphonse Merolla.

Now, you have testified during this trial that

Alphonse Merolla was known to you as Fat Nicky; is that correct?

A There is one person I know as Alphonse Merolla, as Al Merolla.

MR. LEONE: Will you stand up, please.

Q There is the Alphonse Merolla I am referring to (indicating).

Do you know him by some other name, Fat Nicky?

A Yes, I do.

Q Is that what you told the FBI agents and Mr. Ritchie?

A That's correct, sir.

Q You've heard Mr. Ritchie now refer to Alphonse MErolla as Fat Nicky, right?

THE COURT: In his questions addressed to you.

Q In this courtroom?

A I believe so, sir.

Q Tell us, please, when for the first time you say that you learned Alphonse Merolla's nickname to be Fat Nicky?

A On June 5th in the Candlelight Diner.

Q Would you tell us, please, whether or not he was introduced to you by anyone?

A Pardon me.

Q Was he introduced to you as Fat Nicky by anyone?

A That I do not recall, sir.

Q How did you come to find out, as you say, that his nickname is Fat Nicky?

A Because I heard, you know, people speaking to him "Fat Nicky".

Q You heard people speaking --

A In other words, like Al Merolla, the one I know as Al Merolla and DeLiso, I heard them talking in the back, Fat Nicky.

Q Calling him Fat Nicky?

A Yes.

Q No doubt in your mind whatsoever?

A No doubt whatsoever.

Q You heard this on more than one occasion; is that right?

A That is correct.

Q You heard it again on the 28th; is that correct?

A I cannot tell you if I honestly heard that on the 28th.

Q But when you saw him, as you say, you saw him, you identified him in your own mind as Fat Nicky from

the conversations you had heard; is that correct?

A That's correct, sir.

Q If anyone asked you who that individual was you would have said, I know him as Fat Nicky; is that right?

A That's correct.

Q When is the first time, Mr. Goberman, that you spoke to an FBI agent concerning the incidents of June the 5th and June the 28th of 1972?

A I do not know the date, sir.

Q Would it refresh your recollection if I told you that you spoke to Agent McMullen about this case for the first time on August the 28th, 1972, would that be about right?

A If that's what is there, sir, yes.

Q Was it approximately two months after the 28th of June, 1972, that you spoke to Agent McMullen for the first time?

A Approximately, yes, sir.

Q And that's when you related to Agent McMullen the incidents that you say took place; is that correct?

A That's correct.

Q Did you tell Agent McMullen to the best of your ability the names of the people whom you say beat you up?

A I do not recall what I told Agent McMullen.

Q No recollection about that?

A No, sir.

Q Well --

A We just talked in general, sir.

Q You talked in general?

A He asked me questions and I gave him answers.

Q Did you give him specific answers to his questions?

A Whatever he --

Q What do you mean when you say you talked in general?

A In other words, talked about the whole incident, but I do not recall whatever was spoken between us.

Q Well, did Agent McMullen, the FBI agent who's been sitting at this table, say to you, Mr. Goberman, do you know the names of the individuals who you say gave you this terrible beating?

A I assume he did. I just do not know whatever was said that day.

Q Well, let me put it this way: If Agent McMullen asked you who the individuals were by name, you would have told him what?

A The only two, I think there was -- as far as the names were asked, the only ones I was positive of at that

time was John McNamara, Thomas McNamara, Al Merolla, John DeLiso, Angelo Merolla, and I had heard the name Rocco, and the other one I could not identify -- just as Fat Nicky, if he did ask me.

Q If he did ask you? Did you tell him the other individual you knew as Fat Nicky, you had heard him as Fat Nicky?

A I do not recall the questions he asked me the first time.

Q If he asked you to name the individuals you would have said, "One of them was Fat Nicky", right?

MR. RITCHIE: Objection. Argumentative and asked and answered.

THE COURT: Yes, Mr. Leone.

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Goberman-cross/Leone

Q Isn't it a fact that you never told Agent McMullen on that first interview that you knew one of the individuals to be named Fat Nicky?

MR. RITCHIE: Objection, your Honor. He has already stated he doesn't recall.

THE COURT: No, the effort now is to refresh his recollection as to what he told Mr. McMullen, as I understand it.

MR. LEONE: Yes, your Honor.

MR. RITCHIE: Yes, your Honor.

THE COURT: Proceed.

A I do not recall, sir.

Q Do you remember talling Agent McMullen, "one was Rocky, last name unknown, and the other individual was a fat man of Italian descent whose name Goberman does not know"; do you recall saying to Agent McMullen that you didn't know the person's name?

A That is correct, I did not know his name up until just now, or until I heard it in Court.

Q Did you ever mention the nickname Fat Nicky to him?

A I do not recall if I ever did mention it.

Q If I told you that you did not, would you quarrel with that?

A I would not quarrel with it, if that's in Agent McMullen's report.

Q Did you make up that name, Fat Nicky, Mr. Goberman?

A No sir, I did not.

Q Like you made up the other names that you have, Mr. Goberman?

MR. RITCHIE: Objection, your Honor, very argumentative.

THE COURT: Yes.

MR. LEONE: No further questions of this witness.

MR. FISCHETTI: May I start now, sir?

THE COURT: Yes.

CROSS-EXAMINATION BY

BY MR. FISCHETTI:

Q Mr. Goberman, you know who I am, don't you?

A Yes sir, I do.

Q We have met before?

A Yes, we have.

Q This is my client (indicating Defendant DeLiso). You have seen him before, have you not?

A Yes, I have.

Q According to you, the first time you saw him

was on June 5, is that right?

A That is correct.

Q And that was in a trailer, is that correct?

A That is correct.

Q And you were called to the trailer by your construction superintendent, a Mr. Taibbi?

A That is correct.

Q Right?

A Yes sir.

Q Who told you that he (indicating the defendant DeLiso) along with Al Merolla, were there?

A That is correct.

Q And then subsequently my client beat you up on June 5, right?

A That is correct, sir.

Q He beat you up again on June 28, right?

A On June 28th I do not specifically remember your client beating me up.

Q In other words, he did not beat you up on June 28th?

A Not as I recall. I do not think Don DeLiso himself laid a hand on me on June 28th.

Q Did you ever testify under oath that he did beat you up on June 28th?

A I do not recall. He was present, but as to the best of my recollection I do not recall him putting a hand on me.

Q Did you ever testify under oath that he hit you with a blackjack on June 28th?

A I do not recall.

Q When you say you don't recall, does that mean that it could have happened?

A I've thought about it very closely over the last couple of months, and as my memory serves me, which I think I'm accurate, this thing has had time to settle into my mind, I do not recall John DeLiso laying a hand on me June 28t All I recall him was being present.

Q Okay. Now I am asking you, do you remember testifying under oath, just within the last couple of days, that he did beat you up on June 28th; do you remember that?

A I do not specifically recall.

Q Well, if you testified that he did beat you up on June 28th, under oath, it would have been true, right?

A I was trying to think about it. They were all involved. As I specifically remember, I cannot specifically remember John DeLiso laying a hand on me.

Q And I ask you again, Mr. Goberman, if you did testify under oath within the last two days that you do

remember John DeLiso beating you up on June 28th, it would not be true, am I correct?

MR. RITCHIE: Objection, your Honor. Argumentative.

MR. FISCHETTI: I don't believe it is, sir.

THE COURT: No. I think he may answer it in that form, Mr. Ritchie.

MR. RITCHIE: Yes, your Honor.

A In other words, what I meant by it, he was present during the beating. But as to a specific hand being laid on me by Mr. DeLiso, that I cannot say.

Q I understand, Mr. Goberman. My question is, if you testified to that under oath, would it have been true?

THE COURT: The question has been asked and answered.

MR. RITCHIE: Objection.

Q Mr. Goberman, on June 28th you went to a doctor, right?

A That is correct, sir.

Q Dr. Punturo, correct?

A That is correct, sir.

Q You took his name out of a telephone book, as I recall, is that correct?

A That is correct.

Q And in order to get to Dr. Punturo, I believe you have testified you passed by the Smithtown General Hospital?

A That is correct, sir.

Q You were injured on June 28th, that's your testimony, correct?

A That is correct.

Q You were injured pretty seriously, according to yourself, isn't that true?

A We all have our variations of seriously. I guess seriously -- if you don't walk, then you could not say seriously, just that I was injured.

Q Could you have walked for about a week, two weeks after that beating?

A Yes, I could.

Q Did you ever testify under oath that you couldn't walk for about a week after that beating?

A I do not recall.

Q Well, you have testified here that the only time -- correct me if I am wrong -- that the oath is important to you is when you testify in a courtroom, am I correct?

A It's important on other occasions, but in a courtroom it is specifically important you do not lie or anything; you must testify to the truth.

Q So in the courtroom you wouldn't lie?

A That is correct.

Q But on other occasions when you took an oath it may be you would have?

A If it happened to be in connection with a living, I would have to.

Q You testified in the grand jury?

A That is correct.

Q The grand jury is not a courtroom, is it?

A That is correct.

Q It is in another room with a body of citizens like these sitting here, right?

A That is correct, sir.

Q And you raise your hand and you take an oath, do you not?

A That is correct.

Q As a matter of fact, it's the same oath that you took here?

A THat is correct, sir.

Q How do you feel about oaths in the grand jury?

A You would not lie.

Q That's not in a courtroom.

A That's correct, but you would not lie.

Q That's another occasion when you wouldn't lie,

Goberman-cross/Fischetti

in the grand jury?

A That is correct. That's an important thing.

Q Now, did you tell the grand jurors that after the June 28th beating you couldn't walk for a week?

A That is correct.

Q That wasn't a lie?

A No, it wasn't, because I had a limp. And my right leg still hurts.

Q Did you tell them you couldn't walk for a week?

A That is correct.

Q Who asked you those questions in the grand jury?

A Mr. Ritchie.

Q I wasn't there, was I?

A No sir, you was not.

Q No defense counsel were, were they?

A Pardon me?

Q No defense counsel were, were they?

A No, there was not.

Q In this grand jury, under oath, did you tell a grand juror in response to a grand juror's question that you couldn't walk for a week and you could just about crawl?

A That is correct.

Q And did you tell me here just a few moments

ago that you could walk?

A Yes, I could, but I had a limp. In fact, my right leg is still bad.

Q Are you still crawling or are you walking?

A I'm walking.

Q Okay. Now, this Smithtown General Hospital that you passed, you didn't go in there because you told Ms. Seltzer you were afraid that they would find out that Harry Goberman went to the hospital?

A That is correct.

MR. RITCHIE: Objection, your Honor, that is not the testimony.

THE COURT: He testified to a fear that they would report his condition to the police or district attorney.

MR. FISCHETTI: That's what I mean to say.

THE COURT: It came out a little differently.

MR. FISCHETTI: Unintentionally.

Q Now, did Mr. McNamara know that you were known as Slade?

A I do not believe so, sir.

Q How about Masterson?

MR. RITCHIE: Objection, your Honor. It calls for the operation of another's mind.

MR. FISCHETTI: All right. I will do it another way.

Q Did you ever tell him that your name was Slade?

A I do not believe so.

Q Did you ever tell him that your name was Masterson?

A I do not believe so.

Q Masters?

A I do not believe so.

Q Russell Lambert?

A I do not believe so.

Q Lambert Russ?

A It never was Lambert Russ.

Q Why didn't you go into the hospital under the name Slade?

A I never when into the hospital under the name Slade.

Q Why didn't you?

A Because I am well-known there and I know quite a few of the nurses that work there, so I couldn't go there; they know me.

Q You are well-known?

A. I lived in that town almost 30 years.

(Continued next page.)

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CROSS-EXAMINATION

BY MR. FISCHETTI: (Cont.)

Q How many times have you been in that hospital?

A I would say, one occasion for my ankle plus I've brought my son in there quite a few times.

Q This is all before June 28th?

A I've been bringing my son in there for the last 15 years.

Q You're afraid they would have recognized you by face?

A That is correct.

Q And the aliases wouldn't work this time?

A I just wouldn't go into the hospital after I was threatened with what happened.

Q Because you thought they'd find out?

A Thatis correct.

MR. RITCHIE: Objection, your Honor; asked and answered.

Q By the way, did you tell us everything that you can remember about the conversation on June 5th?

THE COURT: June what?

MR. FISCHETTI: 5th, at the McNamara's.

A (Continuing.) I believe so.

Q How about kickbacks, Mr. Goberman? Was that

talked about?

A When -- when Mr. McNamara --

Q Please. Yes or no? Was that talked about, kickbacks?

A He accused me about a contract. A contract is for X-amount of dollars. If I make a profit on something --

MR. FISCHETTI: I would ask respectfully that that answer be stricken.

THE COURT: Yes.

Are you familiar with the term "Kickback"?

THE WITNESS: I am very familiar with that, your Honor.

THE COURT: All right. Now Mr. Fischetti's question is, was there discussion on June 5?

MR. PISCHETTI: That's right, sir.

THE COURT: Of kickbacks?

THE WITNESS: Yes.

Q You didn't tell us about that in your direct testimony, did you, Mr. Goberman?

A No sir, I did not, because there is no such thing as a kickback when you have a contract. A contractor, I assume, is in business to make a profit.

Q Are you finished, Mr. Goberman?

A Yes, sir, I am.

MR. RITCHIE: I'm going to object to this.

THE COURT: Please, no comment or I will permit Mr. Ritchie to comment.

MR. FISCHETTI: But, Judge, I'll have to move to strike. All right, sir.

THE COURT: Just ask questions.

MR. FISCHETTI: I will, sir.

BY MR. FISCHETTI:

Q When I just asked you a moment ago, Mr. Goberman, if you told us about the entire conversation of June 5th as you remembered it, did you at that time remember kickbacks being discussed on June 5th; yes or no?

A No, I did not, sir.

Q But you remember it now?

A Yes. You've refreshed my memory.

Q Were you accused of taking kickbacks?

A I do not recall.

Q Did you volunteer that you were taking kickbacks?

A I didn't take a kickback, sir. I would not volunteer anything like that.

Q But it was discussed?

A I think it was.

Q You remember the word "kickback," June 5th?

A I heard it from Mr. McNamara before June 5.

Q Talking about June 5th. Do you remember it on that date?

MR. RITCHIE: Objection; asked and answered.

THE COURT: Yes. He has said he does.

MR. FISCHETTI: He does. Oh, all right.

THE COURT: His recollection was refreshed by your questions.

MR. FISCHETTI: All right.

Q Now, this beating on June 5th, that was with blackjacks; was it not?

A The only thing I could specifically remember is one blackjack.

Q One blackjack?

A That is correct.

Q Fists?

A That is correct.

Q Feet?

A Foot, feet; same thing to me.

Q Gun?

A I wasn't hit with the gun. I was threatened with the gun.

Q Is my client a blackjack guy, a foot guy, a hand guy, or all three or what? What was it?

A Your client did not actually point the gun at me.

Q Well, how about a blackjack?

A I cannot say if he specifically had a blackjack in his hand.

Q Do you remember ever testifying under oath that he hit you with a blackjack on June 5th?

A I do not recall, sir.

Q If you had testified to that under oath, it wouldn't have been true; is that correct?

A Sir, I do not specifically remember at this time if your client, as you say, hit me with a blackjack on June 5.

Q But if you told us under oath that you did remember it, it wouldn't have been true; right?

A Yes, it would have been true.

Q Because you may have remembered it then?

A That is correct.

Q You may not remember it now?

A As specifically a blackjack in his hand, right now, I did not recall if he had one.

Q But you may have remembered that he had one on another occasion, when you testified under oath?

MR. RITCHIE: Objection, your Honor.

THE COURT: Yes. That has been asked and answered.

MR. FISCHETTI: All right, sir.

Q How many felony convictions do you have, Mr. Goberman?

A Two.

Q What are they? One at a time. Give me one.

A Grand larceny and theft of foreign commerce.

Q That's all one?

A That was two different ones.

Q Give me one. One is grand larceny?

A That is correct.

Q When was that?

A Approximately '57, if I recall correctly?

Q Next one?

A Theft of foreign commerce, approximately 1964.

Q How about grand larceny in the first degree? Were you ever convicted of that?

A Yes, Iwas; in '57.

Q Okay. How about kidnapping, 1962, convicted of that?

A No sir, I was not.

MR. RITCHIE: Objection, your Honor. Mr. -- I must object to this very strenuously.

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May we have a side bar on this.

THE COURT: Yes.

(Side bar follows.)

MR. RITCHIE: Mr. Fischetti is getting into arrests and I don't think there is --

MR. FISCHETTI: No, Judge. I don't have to accept -- I don't know what they are, Judge. I don't have to accept Mr. Ritchie's. He's told me two. Here is a grand larceny first degreee To me that's a felony. One year probation.

THE COURT: One year sentence and probation.

MR. FISCHETTI: That could be a felony. I'm entitled to ask him. I'll accept his answer.

MR. RITCHIE: He so testified.

MR. FISCHETTI: This one is Riverhead and Hawthorne. I am entitled to inquire if they're different.

This is kidnapping.

MR. RITCHIE: He's been supplied with them for 9 months now and he had --

THE COURT: He was convicted of attempted robbery.

MR. FISCHETTI: These are writings, sir, but assuming that. What about this one?

THE COURT: But you have no reason to believe at all -- I am quite sure you and your colleagues checked into this. This is a way of getting the arrest record in. It is improper.

MR. FISCHETTI: I know I am bound by his answer but I thought I could ask if he was convicted of these several ones.

THE COURT: The answer does not serve the purpose of the occasion, which is simply to go -

MR. FISCHETTI: Look at this, please. I am not trying to belabor the point.

This is Riverhead, '65, illegal possession of a dangerous weapon. A person who has been convicted of a felony. That's a felony or I don't know how to practice law.

MR. RITCHIE: Mr. Fischetti has had these documents for 9 months.

THE COURT: 6 months.

MR. FISCHETTI: He could be sent for 60 days.

THE COURT: Right. That is what you should ask.

MR. FISCHETTI: I don't plan to ask about that.

THE COURT: But not the others.

MR. FISCHETTI: All right. What about this, first degree grand larceny, a felony. Second degree

is a felony, too.

THE COURT: Is that the same as this (indicating)?

MR. FISCHETTI: I don't think so, Judge. That's '56. This is '57.

MR. LEONE: Grand larceny second degree.

THE COURT: I see.

MR. FISCHETTI: This is Mineola. This is Hawthorne (indicating).

MR. GILLEN: I don't know where that is. I assume it's upstate.

MR. RITCHIE: Your Honor, Mr. Fischetti has had this document for 9 months.

THE COURT: I know, but the question is, it looks --

MR. FISCHETTI: Do you know that that isn't a felony? Will you represent this on the record?

MR. RITCHIE: I will not represent anything.

MR. FISCHETTI: Fine. Then let me ask it. I'm entitled to.

THE COURT: All right.

MR. FISCHETTI: I'll take his answer.

(In open Court.)

BY MR. FISCHETTI:

Q Mr. Goberman, September 27, 1956, were you

convicted in Mineola, New York, of grand larceny in the first degree?

A Yes, I was.

Q Now, is that a different conviction than you've told us about on direct, the two that you've told us about, the third one?

A No, sir, it is not. The same one.

Q That's one? Okay.

Now, what about this theft from interstate commerce, when and where was that?

A That was in lieu of the State indictment for the same thing and the Federal Government superseded the State charge.

Q Oh. So you were arrested in two jurisdictions, State and Federal?

A It was originally State and then the Federal Government superseded and became Federal, which was theft of foreign commerce.

(Continued on next page.)

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Q What about the kidnapping?

A That's all the same thing.

MR. RITCHIE: Your Honor, I believe that that has been adequately discussed at the side bar and --

MR. FISCHETTI: I don't think it has at all.

MR. RITCHIE: I don't think there is any reason for that question.

THE COURT: Yes, we have.

MR. FISCHETTI: All right.

Q When was the last time you were convicted of any crime?

MR. RITCHIE: Objection, your Honor. That's improper cross-examination.

THE COURT: He may ask.

MR. RITCHIE: The question is crime, your Honor.

THE COURT: What?

MR. RITCHIE: The question was crime.

MR. FISCHETTI: All right.

THE COURT: He may ask.

A (Continuing.) I would not know.

I do not know.

Q Would you think about it for a minute?

A I am thinking about it. I do not know. It

must be a while back.

Q Were you ever convicted of possession of a dangerous weapon, 1965 in Roverhead, New York?

A Yes, I was.

Q Did you tell us about that one before?

A It was not a felony.

MR. RITCHIE: I move to strike that question and answer then, your Honor.

THE COURT: Granted.

Q The lawyer who met you on June 28, what was his name?

A June the 28th?

THE COURT: This is in connection with the letter dated June 29; is that it? Or the lawyer --

MR. FISCHETTI: I am sorry. I will lay a few foundation questions, sir.

THE COURT: All right.

Q On june 28th you were arrested; weren't you?

A That is correct.

Q And on June 28th you --

A I cannot say if I was arrested. I was asked to come to the police station. I went to the police station. I don't think I was charged with anything.

THE COURT: In company?

THE WITNESS: In company.

Q Do you think you may have gone voluntarily?

A Pardon me?

Q Do you think you may have gone voluntarily?

A If a police officer asks you to go with him, you do go.

Q I guess so.

Who was the lawyer that came to the police station?

A Emanueal Sfaelos.

Q He's been your lawyer before?

A Yes.

Q You called him at the police station?

A That is correct.

Q Did you tell this lawyer Sfaelos that you were thinking os suing civily for what happened?

A I do not recall.

Q You may have?

A It's -- it's possible I could have asked on advice what to do.

Q Did he refer you to these civil lawyers that you are using?

A Pardon?

Q Did he refer you to these civil lawyers that you are using?

A No sir, he did not.

Q You knew them before?

A Before June 28?

Q Yes.

A No, I did not.

Q Did you get them out of the phone book, like Dr. Punturo?

A No sir, I did not.

Q Now, you say that on June 28, 1972 when the police officer stopped you, you are not sure whether you were under arrest or not; is that correct?

A That is correct.

Q As a matter of fact, you went to court because of that arrest; didn't you?

A It was for a traffic summons, which I did not personally appear at. Someone paid for me.

Q But did that traffic summons arise out of the June 28 stopping of your vehicle?

A That is correct, it was.

Q Did you pay a fine?

A Yes, I did.

Q Or was the case dismissed?

A No. I paid a fine of $25.

Q You say that it was just a traffic violation?

A That is correct.

Q Isn't it a fact, Mr. Goberman, that you were charged with criminally possessing a forged instrument in the second degree?

A No sir, it was not.

MR. RITCHIE: Objection. I don't think there is any basis for that question.

MR. FISCHETTI: I'll show him the basis.

May I have this marked for identification?

THE CLERK: Yes sir.

AI, Defendant De Liso's Exhibit AI for identification.

(So marked.)

MR. FISCHETTI: With the Court's permission, may I stand with the witness for a moment?

THE COURT: Yes.

BY MR. FISCHETTI:

Q Would you look at that, Mr. Goberman? It says 6/20/73?

A That's correct.

Q Is that the day you were in court?

A You just asked me --

Q Was --

A The date, so I could correct you about it,

I'm not trying to be facetious.

Q That's all right.

A You asked me on 6/28/72.

Q Right.

A That is -- excuse me -- 6/20/73.

Q That's right. That's the date it was dismissed; was it not?

A Dismissed?

Q Yes, dismissed.

A Right. And this -- it happened a year after that. I think you're --

Q You are saying that on 6/20/73, that is a new time that you were charged with criminal possession of a forged instrument?

MR. RITCHIE: Your Honor, I must object.

A It's written --

THE COURT: This is totally beside the point, really.

Q Did you tell Agent McMullen that you had to go to court because of this June 28th meeting with these two police officers?

A I could not tell you that. I would not recall.

Q Could you have told him that?

A I would not know.

Q Could you have asked for his help?

A No.

Q You could not have?

A No.

MR. FISCHETTI: Judge, I am going to go into another area. May I have a few minutes?

THE COURT: Yes.

MR. FISCHETTI: I was asking if we might --

THE COURT: All right, we will have a short recess now, members of the jury. Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide?

(The following occurred in the absence of the jury.)

MR. MEISELMAN: Your Honor, may I have this marked as an exhibit for identification?

THE CLERK: Yes sir.

Marked for identification as Defendant McNamara's Exhibit AJ.

(Subpoena so marked.)

MR. MEISELMAN: May I describe it for the record as being a subpoena ducas tecum on Cantor, Blodnick and Haber, 330 South Broadway, Hicksville,

together with an affidavit of service thereof.

Your Honor, this was delivered to my home last night by my office and they have advised me that Cantor, Blodnick and Haber were served with the subpoena issued in connection with this matter to produce documents which may pertain -- which they may have with Harold Goberman and HarMac contracting.

My office advises me that they had asked this office to be on call.

They also advised me that the office said they would not be on call. They would come here when they were subpoenaed and at no other time, and if they want them again, that they'd have to resubpoena them.

I do not see anyone that I recognize in the court room.

I would like their presence to be requested pursuant to that subpoena, to see if they are here.

THE COURT: Could you see if they are here?

THE CLERK: Yes, your Honor.

THE COURT: Call out.

THE CLERK: Yes sir. Is anyone here from Cantor, Blodnick & Haber? Cantor, Blodnick & Haber, 380 South Broadway, Hicksville, New York?

No response, your Honor.

MR. MEISELMAN: Your Honor, may we call it again in a little while and then perhaps I may ask your Honor for other remedies?

THE COURT: Very well.

MR. MEISELMAN: Than you, your Honor.

(Recess taken.)

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CROSS-EXAMINATION

BY MR. FISCHETTI: (Cont.)

(Jury present.)

Q June 5th, 1972, my client beat you on that day, did he not?

A Yes, he did.

Q That one there is no doubt in your mind about?

A No doubt about it.

Q As you sit there now you can't swear that he hit you on the 28th, can you?

A That is correct, sir.

Q Maybe he didn't even touch you, correct?

A Pardon me?

Q Maybe he didn't even touch you, right?

A He was present on June 28th.

Q Maybe -- maybe he didn't even touch you, right?

MR. RITCHIE: Objection, asked and answered.

THE COURT: Yes, it has been asked and answered.

Q How many black jacks were there on June 28th?

A That I could positively remember fight now, one.

Q How many people that used that one blackjack that you remember?

A I cannot particularly recall at the present time.

Q Mr. Goberman, do you recall testifying on January 11th, 1974 in a courtroom, under oath, and being asked these questions and giving these answers;

MR. FISCHETTI: Page 862, Mr. Ritchie.

Q June 28 -- I believe it's me questioning you -- again:

"Question: McNamara's people beat you with blackjacks, right?

"Answer: That's right, sir.

"Question: This time there was more than one blackjack, right?

"Answer: Right, sir.

"Question: And they passed the blackjacks around, correct?

"Answer: I can only specifically remember three of them that had the blackjacks."

Did you give those answers to those questions?

A That's what I testified to before.

Q That three of them had blackjacks?

A No, that I could specifically remember three of them with the blackjacks in their hands.

Q That's what you meant?

A Sir, I think I testified to that yesterday.

Q Alan Goberman left the room on June 5th?

A Correct, he was told to leave the room.

Q Did he see any part of this beating?

THE COURT: That has been asked and answered.

MR. FISCHETTI: Just a foundation question.

Q Was he alone outside the room?

A After he went out -- at a certain point of time, Mr. John DeLiso was told to go out and watch my brother.

Q After he went out?

A Yes.

Q Did you ever testify under oath that John DeLiso was told to go outside the room and bring your brother outside the room?

A My brother was told to go out and John DeLiso was told to go out inthe hall with my brother.

Q After your brother left?

A That's correct, it could be a minute. I testified to that.

Q During that minute when your brother was outside the room and John DeLiso was inside the room,is that when he beat you up?

A Would you please repeat that?

Q During the minute when your brother was outside and DeLiso was inside the room, was that the time he beat you up?

MR. RITCHIE: Objection, assuming facts not in evidence. There is no testimony that it was only a minute.

Q How long was it?

A I cannot tell you the exact length of time.

Q Whatever length of time it was, was that the time when DeLiso beat you up?

A I just don't follow you, sir.

Q Okay.

We will start again. June 5th, you went to the room with your brobber; is that correct?

A THat is correct.

Q John DeLiso was there or wasn't there, which is it? A He was in the room.

Q Okay.

Now, your brother leaves the room, right?

A That is correct.

Q Does John DeLiso go out with him or remain?

A He remained for a minute or two.

Q All right. During that minute or two when John DeLiso was in the room and your brother is outsidethe room,-- do you know what time I am talking about now?

A Yes, I do.

Q Is that the time he hit you with the blackjack?

A That is correct, that's when I got the beating and Mr. DeLiso handed Mr. Merolla the gun and then Mr. DeLiso left the room and went outside in the hall with my brother.

Q Okay.

Your brother was in the room initially, correct?

A When we first entered, yes.

Q Mr. DeLiso was in the room initially, right?

A That is correct.

Q And he went out by himself; right?

A Who are you referring to, sir?

Q Your brother.

A That is correct, he was told to leave the room and left by himself, then Mr. DeLiso was right behind him.

Q And then DeLiso came back in later?

A At what point in time?

Q At any time.

A Yes, after the beating was over with.

Q That's when DeLiso came in?

A In other words, when the worse of it was over and my brother reentered, Mr. DeLiso was with my brother or he may have come back a minute or two before, I cannot tell you

that exactly.

Q He could have come in with your brother during the beating or he could come in without your brother after the beating; is that your best recollection?

MR. RITCHIE: Objection, that doesn't cover all the possibilities.

THE COURT: No, it does not.

Q I ask you again, give me your best recollection.

MR. RITCHIE: Asked and answered.

THE COURT: He may answer.

Q Give me your best recollection as to when he came in -- when DeLiso came into the room.

A At what point of time?

Q When he came in after he went out?

A By that time I think I was moved from the chair over to the desk.

Q Were you still getting a beating?

A When he came back in , I can't -- I cannot honestly tell you that. I do not know.

Q Did he give Al Morella the gun before he went out of the room with your brother or after he came in, according to you?

A Before he left the room.

Q Are yousure your brother was in the room first

and then told to leave?

A That is correct.

Q And your sure when your brother left DeLiso was still in the room and then left sometime later.

A Yes, within a very short period of time.

Q Did you testify under oath on January 7th, 1974 in this courtroom, Mr. Goberman?

THE COURT: Let's not get into the 7th or 8th business.

MR. RITCHIE: It is January 8th -- it was January 8th.

MR. FISCHETTI: I accept the Government's representation.

Q January 8th, 1974, under oath, in this courtroom, were you asked these questions and did you give these answers:

"Did you and your brother remain together when you got upstairs"-- I'm sorry, 293 -- I apologize. Top of the page.

"Question: Did you nad your brother remain together when you got upstairs?

"Answer: For a while we did.

"Question: Did you eventually separate?

"Answer: Yes.

"Question: Where did you go?

"Answer: I went into the inner office.

"Question: Where did your brother remain?

"Answer: My brother remained outside inthe hall."

Do you remember giving those answers to those questions, yes or no?

A YEs, sir, I do.

Q Okay. I am continuing.

"Question: Was he told to remain there?

"Answer: Yes.

"Question: And who was there with him, if anyone?

"Answer: They told John DeLiso --

"Question: Who told John DeLiso?

"Answer: Al Merolla told John DeLiso to take my brother out in the hall.

"Question: And you went into the office?

"Answer: Yes .

"Question: And when you got into the office who was there?

"Answer: Al Merolla, Angelo Merolla, Rocco Merolla, Pat Nicky, John McNamara and Thomas McNamara"

Did you give those answers to those questions?

A Yes.

Q Do you remember saying that John DeLiso was out in the hall?

A Just now he went out into the hall.

(continued next page.)

Goberman-cross/Fischetti

Q Let me ask you this:

Do you see anything inconsistent with what I read to you and what you testified to?

MR. RITCHIE: Objection.

MR. FISCHETTI: I am asking him, sir.

MR. RITCHIE: All right.

A No sir, because this time I was asked more specifically and I said from the office out into the hall and everything is consistent.

Q I see.

Angelo Merolla beat you up too, didn't he?

A That is correct.

Q Rocco Merolla beat you up too, didn't he?

A Correct.

Q You are not just suing the McNamaras civilly, are you not?

A No, I am not.

Q You are suing Angelo Merolla?

A Right.

Q Rocco Merolla?

A Yes.

Q John DeLiso?

A I believe so.

Q You believe so or do you know?

Goberman-cross/Fischetti

A I do not positively know.

Q You don't know if you are suing him for a million and a half dollars for an assault or not?

MR. RITCHIE: Objection, argumentative.

THE COURT: He asked him if he does or does not remember.

A Sir, I very really -- actually never read the face of those papers. I just signed the back sheet.

MR. FISCHETTI: May I approach, your Honor?

THE COURT: Yes.

Q Defendant's Exhibit V in evidence. Read the caption there.

A Harold Goberman plaintiff against John McNamara, Alphonse Merolla, Angelo Merolla, Rocco Merolla, John DeLiso and Thomas McNamara, Sr.

Q Now you know who you are suing?

A Yes.

Q Didn't know before?

A I knew --

MR. RITCHIE: Objection, your Honor.

A (Continuing) -- as I said, I never read the face.

MR. FISCHETTI: He objected.

Q As a matter of fact, Mr. Goberman, it is not a

Goberman-cross/Fischetti

million and a half, it is two and a half million?

A I believe it is $1,600,000.

Q Let us see if I can refresh your recollection.

Your recollection is to a million six?

A Correct.

MR. FISCHETTI: Sorry, I have the wrong document.

May the record indicate that -- I guess it has not been identified?

THE CLERK: Marked for identification as the Defendant DeLiso's Exhibit AK.

Q Defendant DeLiso's Exhibit AK for identification, Mr. Goberman, I ask you to look at the last page of that document --

A I just wnat to see if my signature is on it.

Q -- and tell this jury how much you are suing for.

You can go down the amounts if it is easier for you, instead of totalling them up in your mind.

A Maybe it would be easier if you read it to the jury.

Q One million dollars, correct?

A I think there are two one-millions in there that mean the same thing.

Q You think this million and this million is the

same?

A From what I assume. I am not familiar with it. I am not a lawyer.

Q Tell me, did your civil lawyer tell you that it is very important what happened at this criminal case --

MR. RITCHIE: Objection, irrelevant.

Q -- that if you want to collect on your civil, this is important? Did he ever tell you that?

A No sir, he didn't.

In fact, I was discussing it last week --

MR. FISCHETTI: I ask that be stricken.

THE COURT: Yes, did he or did he not tell you?

THE WITNESS: No, he didn't because --

Q He didn't tell you it was important at all?

A That is correct.

Q One other thing, June 28th, you cannot swear that John DeLiso beat you -- you are sure he was there however?

A Correct.

Q As a matter of fact, according to you, under oath, John DeLiso took you downstairs to get a taxicab?

A Correct.

Q You remember that?

A Very distinctly.

Q Did he put you into a taxicab?

A He walked me to the door and said, "Don't worry about it."

Q He was right there when the cab came?

A At the bottom of the stairs, correct.

MR. FISCHETTI: I have nothing further of this witness, if it please the Court.

REDIRECT EXAMINATION

BY MR. RITCHIE:

Q On June 5th, what were you doing at the time that your brother left the inner office?

A On June 5, what was I doing at the time my brother left the inner office?

Q Yes.

A I could not tell you that exactly.

Q During that period of time, had you been engaged in conversation with anyone?

A I do not recall.

Q On June 28, was John McNamara present during the first time you were beaten?

A Yes, he was.

MR. RITCHIE: I have one or two other questions, your Honor.

Q At the time that you were stripped, on June 28th,

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what if anything was said?

MR. GILLEN: Objection, we have had this on direct.

MR. RITCHIE: I do not believe we did.

THE COURT: What was that?

May I hear the question read?

(Question read.)

THE COURT: Right at that very moment?

MR. RITCHIE: Yes, Your Honor.

MR. FISCHETTI: May we know by whom, sir?

Q Could you please attribute as best as you can who said what?

A Alphonse Merolla told me I am a rat, a so-and-so, I went to the D.A. and that I got a bug on me -- meaning a recording or transmitting device -- and that's why I was stripped.

MR. RITCHIE: The Government has no further questions.

MR. GILLEN: No questions, sir.

MR. FISCHETTI: I have none.

MR. LEONE: None.

THE COURT: You may step down, Mr. Goberman.

MR. GILLEN: May we have this marked for identification -- what Mr. Goberman has in his hand?

THE COURT: For a minute I thought you meant Mr. Goberman.

MR. GILLEN: No, we had enough of him.

MR. RITCHIE: We'll have this marked.

MR. GILLEN: It is a defense exhibit.

THE COURT: AL for identification.

THE CLERK: So marked.

MR. GILLEN: May the clerk be directed to keep it in his custody?

THE COURT: I thought that Mr.Ritchie has undertaken to keep it in his custody.

MR. GILLEN: All right, I ask that it not be turned back to Mr. Goberman until we see it.

THE COURT: That is the understanding. I have it understood that we were all squared away before we opened Court today.

MR. RITCHIE: May I address one question to Mr. Gillen?

THE COURT: Yes.

(Pause.)

THE COURT: We are going to have a Xerox of that prepared.

MR. RITCHIE: Yes, Your Honor.

THE COURT: I do not want to advertise the company. That is the only name I know for that process.

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MR. RITCHIE: I do not know if Mr. Goberman is still aware that he is subject to call.

THE COURT: You had better remind him that he is still under subpoena and you may step out for a moment now.

(Mr. Ritchie leaves courtroom.)

Will you stand in for Mr. Ritchie.

(The following transpired at the side bar.)

(Continued next page.)

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THE COURT: This is a microscopic thing, but did Mr. Ritchie present the Grand Jury testimony, or did Dennis Dillon?

MR. GILLEN: They both did. He was in the Grand Jury three times.

THE COURT: All right.

(Open court.)

A L E X G N I A ZD O W S K I , called as a witness, first being duly Sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RITCHIE:

Q You are Alex Gniazdowski, is that correct?

A Right.

Q By whom are you employed, sir?

A McNamara Buick-Pontiac.

Q For how long?

A Ten years.

Q What is your job at McNamara Buick-Pontiac?

A I am a salesman.

Q Are you also a notary public?

A Yes, I am.

Q Do you know an individual named Angelo Merolla?

A Yes, I do.

Q Where did you know him from?

A McNamara's.

Q McNamara Buick-Pontiac?

A The dealership, yes.

Q What did he do for McNamara Buick-Pontiac?

A What did he do?

Q Yes.

A He was a salesman, just as I am.

Q Do you know from what period to what period he was employed at McNamara Buick-Pontiac?

A I guess it was about two years.

Q Was he employed there during the time that the new showroom was being constructed?

A Yes.

Q Do you know any members of his family?

A I do, yes.

Vaguely, but I know who they are.

Q What particular individuals do you know?

A I knew Al, and I believe it was Rocco.

Q Now, I show you what has been marked as Government's Exhibit 16 in evidence.

Directing your attention to the fourth page thereof, Mr. Gniazdowski, I'd ask you, does any of your writing appear thereon?

A Pardon me?

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Q Does any of your writing appear on the fourth page?

A Yes, my name appears.

Q And is that in your capacity as a notary public?

A As a notary, yes.

Q Did you on that date -- on that document, on that date, notarize any particular signatures?

A I notarized Harry's signature, Harry Goberman.

Q In two places, is that correct?

A Right.

Q Once as an individual, and once as a representative of HarMac Contracting Corp.?

A The company, yes.

Q I show you what has been marked as Government's 17 in evidence, and I ask you if your signature, or any writing of yours appears thereon?

A Yes.

Q Is it again your notarization?

A Yes.

Q Once again of Harry Goberman's signature?

A That's right.

Q Do you recall notarizing Harry Goberman's signature on that date?

A Yes, I do.

Q Do you recall where you notarized the signature?

A It was in one of the -- in this case, in one of the McNamara rooms, yes.

Q In which particular room?

A It's considered Jimmy's room.

Q This is Jim who?

A Jim McNamara.

Q Is it a single room, or is it a complex of rooms?

A Sort of an apartment, I guess.

Q And do you recall who was present at the time that you notarized that signature?

A Well, Harry was, for one, and John McNamara, and that's about it, that I remember by name.

Q Have you testified previously in this matter?

A Yes, I have.

Q At the time you testified, was your recollection better than it is now?

A It could have been, yes.

Q To refresh your recollection, I will show you your prior testimony.

THE COURT: Page?

MR. RITCHIE: I am going to get it, your Honor.

Q Directing your attention to page 1382 and 1383, I would ask you to read them.

THE COURT: To yourself, I think Mr. Ritchie means.

MR. RITCHIE: Yes, sir.

A Yes, I believe -- You referred to it, Angelo is one here, yes. And once again, at that time I mentioned Al. He must have been there.

Q Does that refresh your recollection as to --

A Yes, it does a little bit, yes.

Q Is it now your testimony that Angelo Merolla was there, and Al Merolla was there?

A That's right.

Q Now, do you see the individual Al Merolla that you are referring to in this courtroom today?

A Yes, he is sitting over there, the fellow with the glasses.

MS. SELTZER: Indicating the defendant Alphonse M. Merolla, your Honor.

Q Were you asked to pick out the individual you knew as Al previously?

A Yes, I had.

Q Did you pick out that individual at that time?

A No, I didn't.

Q Do you know which individual you did pick out?

A I referred to his brother Rocco; there is a family

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resemblance.

Q Is there a close family resemblance, in your opinion, between the two --

MR. LEONE: I don't think it's proper, Judge.

THE COURT: I thin it is, of course, opinion evidence, which ordinarily is not received, but here he is really being asked was he able to distinguish the two, or do they look so much alike that he couldn't. That is really what he is being asked.

A To me, they all have a resemblance, family resemblance.

THE COURT: In your eyes?

THE WITNESS: Yes.

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(continued on next page.)

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DIRECT EXAMINATION

BY MR. RITCHIE: (Cont.)

Q Mr. Gniazdowski, will you keep your voice up, please.

A Okay.

THE COURT: If you lean forward a little or pull that toward you, Mr. Gniazdowski,you will be better able to be heard.

Q Besides the four individuals that you have told us about, were there any other individuals present in that room at that time?

A I believe there were, but there was no way I could say who they were or how many were there.

Q Was there more than one additional individual other than those four?

A Could have been, yes.

Q Now, without characterizing, can you describe Harry Goberman at the time that he signed that document?

A Normal.

THE COURT: Is that single, plural?

Q At the time he signed those documents -- did he sign those documents at or about the same time?

A Just about, yes.

Q You only went into that room once?

A That's right.

Q And during the time that you went into that room he signed two documents?

A Within a matter of a few minutes, right.

Q When you say normal, can you describe what you mean by normal?

A Well, I had signed quite a few papers on numerou occasions for this gentleman, and he looked as he always had. There was nothing abnormal about the man.

Q Can you describe what you mean -- will you characterize him as a quiet individual?

A Exceptionally so, yes.

Q Non-smiling?

A Very blase about everything.

Q And what, if anything, did he do besides sign the document while you were in the room?

A Nothing. Nothing abnormal except that he read the paper over.

MR. RITCHIE: No further questions.

CROSS-EXAMINATION

xx BY MR. GILLEN:

Q Mr. Gniazdowski, my name is Michael Gillen and we have met; is that correct, sir?

A Yes.

Q On June 28th, you said it was in the apartment of James McNamara?

A Right.

Q Is he the son of Thomas McNamara?

A Yes, he is.

Q And the brother of John McNamara?

A Right.

Q Now, is that also used as an office?

A Yes, I guess on other occasions they have. I have gone up there but very rarely.

Q Was it like a conference room used?

A I would believe so. I don't really know how they use it, beyond the point of the time I was called there.

Q Now, were there office machines in there, typewriters, calculators, things of that nature, if you recall, in James McNamara's apartment?

A I can't say.

Q You don't know one way or the other, correct?

A No.

Q Now, do you know a girl by the name of Dorothea Tomaselli?

A Yes.

Q On June 28th was Dorothea Tomaselli in that room?

A Yes, she was in and out. I don't believe she -- she was sort of a go-for. You know, getting whatever was wanted at the time.

Q Was she there when you notarized Mr. Goberman's signature?

A I believe she was. I couldn't say she was.

Q How ere you called into the room, do you recall?

A I can't remember whether I was paged or Dorothea in this case came down for me. I know I was called to come up.

Q But you do have a recollection of Dorothea -- let's call her Dotty.

A Dotty, right.

Q Dotty was in the room when Mr.Goberman signed these documents?

A She had been there, right.

Q You told us he read the paperwork; is that correct?

A That's right.

Q That means Mr. Goberman read it, right?

A Harry read the papers he was signing, right.

Q Will you describe for the jury how you know he r read these papers?

A He actually stood and went through the page,

he spent time on each sheet.

Q How long did that take, do you know?

A Very short time, it was a matter of minutes, I'd say.

Q Did he have any discussions with anyone pertaining to those documents, if you recall?

A Yeah, on one occasion, this was initialled by him at my request, that a change was made, it was agreed upon and they merely struck it out and he initialled it.

Q You say they agreed upon; who agreed upon?

A In this case it was between John and Harry.

Q Did John and Harry have a discussion about the documents?

A About the phrase or wording, very short phrase in the second document, the first, whichever you want to call it.

Q But you do recall that Harry and John McNamara actually discussed these documents?

A About this one little clause, yes.

Q Was this discussion before Harry signed the papers?

A Before. He didn't care to sign the smaller of the two documents with the phrase, clause or -- whatever the wording was. I can't remember.

Q Now, was he disheveled in any way?

A No.

Q Was his clothes in disarray?

A No.

Q Did he have any marks on his person?

A Not that I could see.

Q Did he complain of any marks or any beating or anything like that?

A No.

Q As a matter of fact, you don't have that much of a recollection because everything was normal; is that right?

A That's right.

Q Now, I think you told us you had notarized Harry's signature on a number of occasions.

A Quite a few, yes. I couldn't even tell you how many.

Q Did that have to do with various documents prepared during the period of time that the building was in construction?

A During and before, right.

Q Did he look any different on this 28th than he did on any o f those other dates?

A None whatsoever.

Q Is that what you mean by normal?

A Normal, yes.

Q Now, how long did you work in that building?

A Lower part, I was with them for about eight years, in the lower building.

Q Can you describe for us, please -- is there an office space -- was there office space on the upper floors?

A Yes.

Q And the showroom was on the lower floor; is that correct?

A That's correct.

MR. RITCHIE: I'm going to object to leading questions at this time.

MR. GILLEN: This is cross-examination, your Honor.

THE COURT: Well, no, because you have taken him afield from his direct.

MR. GILLEN: I've asked him to describe the upper offices --

THE COURT: Yes, exactly, and he is your witness as to this new matter. Do not lead.

BY MR. GILLEN:

Q Is James McNamara's apartment part of that complex of the offices that existed upstairs?

A Right, yes.

MR. GILLEN: Can I have this -- it's marked for identification.

Q Now, I show you Defendant's Exhibit G for identification.

Can you tell us, please, will you look at this carefully, and can you tell us if you recognize the areas depicted in this diagram?

THE COURT: Blueprint, whatever it is.

MR. GILLEN: Yes, sir.

THE COURT: Can you orient yourself, Mr. Gniazdowski?

THE WITNESS: I think so.

What is the street level, if I may ask?

Q Does that represent the upper level of the old building, the diagram of the office area?

A I'm lost.

Q Perhaps I can help.

THE COURT: Maybe if you take him up the staircase to it.

THE WITNESS: Is this the one leading out to the street?

Q Yes. There is a stair case -- this would be the entrance -- perhaps we will do it this way.

Did Mr. Thomas McNarama have an office in the upper portion of the building?

A Yes, he did.

Q Can you say -- is there a direction on this map?

THE COURT: North, south, east and west, you mean?

MR. GILLEN: Yes, sir.

THE COURT: I don't know if they put it on indoor maps, I'm not sure.

MR. GILLEN: I think that's what the problem is.

THE WITNESS: Is this the main street over here --

Q This would be Main Street and this is West Broadway --

A This is the hallway up.

Q Have you got it orientated, sir?

A I believe so, okay.

Q Will you tell us,please, does this drawing fairly represent the upstairs offices as of June 5, 1972?

A Yes. This is the -- the way -- this is where the bookkeeping department and Tom McNamara's office was located.

Q Have you been up there many times?

A Many times, yes.

Q Mark, if you will, where Tom McNamara's office is located.

A Right here (indicating).

MR GILLEN: I'd offer this into evidence, your Honor.

THE COURT: Show it to Mr. Ritchie.

MR. RITCHIE: Your Honor I must oppose the admission of this into evidence because, ashas been previously stated, it is not --

THE COURT: As I understand it -- is it dated, Mr. Ritchie?

MR. RITCHIE: It is dated, your Honor, and it's dated 8/20/73, and it's a proposed --

THE COURT: It has a label too, doesn't it.

MR. RITCHIE: Proposed alteration for McNamara Buick Dealer.

MR. GILLEN: I asked if it was a fair representation as of June 5, 1972.

MR. RITCHIE: Your Honor, I don't believe he can --

THE COURT: I think Mr. Ritchie would prefer you defer that a little bit. At least.

MR. GILLEN: Fine.

THE COURT: In view of the next question that you were about to ask.

BY MR. GILLEN:

Q Mr. Gniazdowski, you have been in Tom McNamara's office on the second floor; is that right?

A That's right.

Q And is there another office next to his office, or was there?

A Well, as you came in off the hallway you entered the clerical department, then his office.

THE COURT: You had to go from the hall through the clerical department to reach Mr. McNamara's office?

THE WITNESS: That's right, sir.

Q Did anyone else -- was anyone else in the same space or office that we are describing as Tom McNamara's office?

A There was Charlie Sherman who originally was the head bookkeeper. He's deceased.

Q So it was not exclusively Tom McNamara's office?

A No.

Q It wasn't like an inner private office; is that correct?

A No.

Q It was an integral part of that office procedure upstairs, right?

A Right.

Q Was there a doorway going from the hallway into the office area?

A A doorway, yes.

Q And was there a door leading from the hallway into the office area?

A Yes.

Q Was there a door from what you have described as the bookkeeping area into the room where Tom McNamara and Mr. Sherman had their space or office?

A I'd say no, but if there was it was never closed.

Q There was a space to go into, right?

A A door, archway.

Q Was there an actually physical door there?

A I'd say no.

MR. RITCHIE: Objection, your Honor, asked and answered.

THE COURT: No. I think that's very much the point. I think it is warranted to ask it in that form at this time.

He's already answered it anyway, I'm afraid, Mr. Ritchie.

MR. RITCHIE: Yes, your Honor.

MR. GILLEN: May I have these two documents marked for identification, please.

THE CLERK: Defendant McNamara's Exhibits AM and AN for identification.

(So marked.)

BY MR. GILLEN:

Q I show you Defendant McNamara's AN and AM for identification, sir.

Do you recognize anything on those documents?

A I notarized the two documents, yes.

Q Your signature is on them?

A Yes.

Q Will you tell us, please, what was the date that you notarized these two documents?

A The date of sale or transfer form is signed on the 5th of June.

Q What year, sir?

A "72.

Q The other document?

A The other document, the 5th of June, '72.

Q Whose signature did you notarize?

A Harry's in each case. Harry Goberman.

Q Will you tell us, please, where was it that you notarized these documents, if you recall?

A These, if I remember correctly, were done in Tom McNamara's office.

Q Will you tell us, please, how you came to be in Tom McNamara's office to notarize those documents?

A Once again, I was either paged or asked to come up. I don't remember.

Q And did you actually see Harry Goberman sign those two documents?

A Yes, sir, I did.

Q Will you tell us, please, what was his -- how did he look to you when he signed those documents?

A Same as always, normal, from my point of view, normal.

Q Did he complain of any beating or anything of that nature?

A No.

Q Incidentally, this office upstairs, are there many people coming and going throughout the day up there?

A Yeah. It is our main paper office, all our billing and record keeping was done in this area.

Q How many employees were there at that time in

'72, at McNamara Buick?

A In the office itself?

Q First, in the office itself then the salesmen and everything else; first in the office itself, if you recall?

A I believe there were possibly three people in the clerical department, and of course Charlie Sherman, the bookkeeper --

Q He is deceased; is that correct?

A Right.

Q Fine.

A And then in the -- of course we had a billing clerk up there and the office manager.

Q Now, how many salesmen were employed -- they would have been downstairs; is that correct?

A Yes. Let's see, four or five at that time, I believe.

Q Were there any mechanics?

A Mechanics --

Q Employed in connection withthe service facilities?

A Oh, yes. I'd say there were about eighteen, twenty or so.

Q Were there any transporters for vehicles,

things of that nature, people that would drive cars back and forth?

A We had people driving for us, is that what you mean?

Q Yes.

A Yes.

Q So would it be fair to say there were approximately anywhere from 30 to 40 employees on any given day?

A I'd say in that neighborhood. I couldn't say specifically.

Q Now, did each of those employees from time to time have occasion to go up to the clerical offices?

A Oh, definitely.

MR. RITCHIE: I must object to the leading.

THE COURT: Yes. You ought not to lead, Mr. Gillen, on these points.

Q What about on June 28th, it would have been the same thing, would it have not?

MR. RITCHIE: Objection, your Honor, it's leading.

MR. GILLEN: It's cross-examination on June 28th, your Honor.

MR. RITCHIE: Objection to the leading.

THE COURT: He can lead on what is properly cross. On this one he may.

MR. RITCHIE: Yes, your Honor.

THE COURT: It's a little hard to sort out, I agree, Mr. Ritchie.

BY MR. GILLEN:

Q So , as a matter of fact, some 30 or 40 people would have occasion at any given time to go into those clerical offices; is that correct?

A Yes.

Q And it was a busy place, a busy shop, the whole thing when I say busy shop?

A That's right.

Q Was John McNamara there on June 5, if you know, when these documents were signed?

A I don't recall.

Q When you notarized these documents, do you recall whether Dorothea Tomaselli was present?'

A I believe she was in the outer office.

Q She worked up there, is that right?

A Yes.

(continued next page.)

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CROSS-EXAMINATION

BY MR. GILLEN: (Cont'd.)

Q Was there anybody else present on June 5th, if you recall? When Harry signed these documents?

A In the -- Tom's office?

Q Yes.

A No, I don't recall, There were people there but who -- you know, between the two offices we did have people other than myself.

Q But you don't know who those people were?

A No.

Q Fine. Now, -- excuse me one moment, your Honor.

Incidentally, had you ever seen this diagram I showed you before, Mr. Gniazdowski? The plan?

A The plan, no. I hadn't.

MR. RITCHIE: I must object.

MR. GILLEN: I have nothing further. Nothing further, sir.

MS. SELTZER: I just have a few short questions, your Honor.

CROSS-EXAMINATION

BY MS. SELTZER:

Q Mr. Gniazdowski, do you know Al Merolla?

A Yes, I do.

Q And how do you know Al Merolla?

A Only through his brother, Angelo.

Q And did you have occassion to meet Mr. Merolla at any time?

A One formal way, Angelo introduced me to his brother, at the Shoreham.

Q Did Mr. Merolla used to come around to the Shoreham?

A Yes.

Q How often?

A I couldn't say.

Q Well, would it have been unusual for you to see him at the Shoreham?

A No.

Q Do you know if he ever bought a car from there?

A I believe, yes.

Q Do you know if he ever had that car serviced there?

A I believe it was but I couldn't -- I didn't have access.

Q Would it be unusual for Mr. Merolla to come around at least once a week or maybe twice a week on occassion for one reason or another?

A No, no, whether it was a personal visit or whatever.

Q Do you know if Harry Goberman was ever present at McNamara buick when Mr. Merolla was visiting?

A I couldn't say that.

MS. SELTZER: Okay.

I have no further questions.

MR. RITCHIE: Any other questions?

MR. LEONE: No questions, Judge.

MR. FISCHETTI: I have no questions.

MR. RITCHIE: May I have some cross-examination, your Honor?

MR. LEONE: Redirect or cross?

MR. RITCHIE: Cross.

THE COURT: It will be both.

REDIRECT AND CROSS-EXAMINATION

BY MR. RITCHIE:

MR. RITCHIE: Redirect, first of all.

Q Now, on June 28th, nothing unusual happened, is that correct?

A That's right.

Q And you have no independent recollection on that date at all?

A No. Other than what I stated as being a

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normal --

Q When you say normal, you didn't know anything, is that correct?

A He looked normal to me, is what I am referring to. No different than he had in the past, okay? Is that -- is that the question?

Q With respect to the door, in Tom McNamara's office, --

MR. GILLEN: Objection. He's testified there was no door.

Q With respect to the areaway between the outer office and the inner office in that complex of offices, which is Tom McNamara's apartment?

A Right.

Q Is it your testimony that there might have been a door there?

MR. GILLEN: Objection.

THE COURT: Wait. I am not sure that adding the apartment doesn't complicate matters.

MR. RITCHIE: This is Tom McNamara's office.

THE COURT: Well, the McNamara Sherman office and the bookkeeping space. Is that what you mean?

MR. RITCHIE: Right, your Honor.

THE COURT: Yes.

BY MR. RITCHIE:

Q Is it your testimony that there might have been a door there but that it was never closed?

MR. GILLEN: Objection.

A Well, the door --

THE COURT: Please. That's exactly what he said.

MR. GILLEN: No. I think he testified that there was no door, sir.

THE COURT: The jury -- members of the jury, you must trust your own recollection as to what the testimony that you have heard is. If you find that you are at variance with one another in your recollection of the testimony on something that is a matter of moment to you in arriving at your decision, do not guess or argue. Ask to have it reread. As you can see, it is all being taken down sepcifically.

All right, Mr. Ritchie. Simply ask the question, then, since there seems to be a dispute. About what the witness has said.

BY MR. RITCHIE:

Q Is that your testimony? There might have been a door but to your knowledge, it was never closed?

A That's right. Never closed.

Q Your knowledge is of course based on when you observed --

A As far as I know, there was no door but if there was, it was never closed.

Q While you were there, is that correct?

A At any time. Whether I -- you know.

Q Do you know whether it was closed at times when you weren't looking at it?

Do you know whether there could have been a closed door there at times when you weren't looking at the door? My only question is, --

THE COURT: Necessarily has -- it leaves, you see, a pure argument which from his testimony he was free to make, no matter whether he says yes or no.

MR. RITCHIE: Yes, your Honor.

THE COURT: Objection to the question is never sustained.

MR. RITCHIE: Yes, your Honor.

(Continued on next page.)

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REDIRECT EXAMINATION

BY MR. RITCHIE: (Cont.)

Q Was Mr. McNamara Mr. Sherman's superior?

A Yes.

Q Now, with respect to these 30 to 40 individuals who would at almost any time be in that building, would there normally be 30 to 40 individuals in that office of Tom McNamara composed of the inner and outer office?

A No, not at one time.

Q How many normally would be there?

A Just the clerical help and anybody who might have had -- well, the normal employee. The only time he'd be up there, he had a pay problem or a question about his insurance. Something of that nature. It wasn't normal for him to be up there.

Q And --

A The salesmen were alwasy up there, of course.

Q On June 5th, how many individuals do you recall being in that office at the time that you notarized that signature?

A Are you referring to Tom's office now or the office complex? The two offices together?

Q The two offices together.

A As I say, there was Charlie Sherman, Tom

McNamara, myself and Harry. And then in the outer office there could have been two or three people.

Q Didn't you just testify previously that you didn't know whether Tom McNamara was there?

A Well, no, I didn't. I think I said he was there. I can't say.

Q Those two documents that you were shown and you were asked, you notarized them--are they in evidence now, Mr. Gillen?

MR. GILLEN: I think I offered them. I didn't. I intend to.

THE CLERK: No.

THE COURT: I think they are in evidence. Aren't they?

MR. RITCHIE: I don't think so.

MR. GILLEN: If not, I offer them.

THE CLERK: No, they're not in evidence.

MR. GILLEN: I don't know whether I mouthed the words.

MR. RITCHIE: I'd like to offer them in evidence, also.

MR. GILLEN: Come on. I offered these. I menat to offer them. I thought I offered them, quite frankly.

THE COURT: I thought they were in long ago.

MR. RITCHIE: I don't think there was ever an actual offer.

THE CLERK: Defendant McNamara's Exhibits AM and AN in evidence.

(So marked.)

THE COURT: All right, would counsel step up for just a minute.

(Side bar discussion follows.)

THE COURT: Was Sherman the one who is dead?

MR. GILLEN: Yes.

THE COURT: Someone of you as about that.

MR. GILLEN: What?

THE COURT: Some one of you ask him about that.

MR. GILLEN: I asked him.

MR. RITCHIE: He said he's deceased, your Honor.

MR. GILLEN: He said yes, he was dead.

(In open Court.)

BY MR. RITCHIE:

Q Defendant's AM in evidence is a registration form, is it not?

A It's a motor vehicle form, yes.

Q How much of that form is filled out?

A One-half of the back and only a notation on the other side.

Q What is filled out on the back?

A The back, Harry signed over the form to some party, indicating an office trailer.

Q Is there any identifying marks, any identifying information with respect to the particular office trailer?

A No, No, ID number at all.

Q The only information is trailer; is that correct?

A That is right. Office trailer.

Q Now, with respect to AN in evidence, this is your signature as notary, is that correct?

A Yes.

MR. RITCHIE: Your Honor, may I read AN in evidence?

THE COURT: Yes.

MR. RITCHIE: AN in evidence reads as follows:

"I, Harry Goberman, am repaying a debt of $1600 without interest for one trailer that was purchased by Thomas McNamara and put in my name, Harry Goberman. (Harry Goberman.) For use on the McNamara Buick-Pontiac, Inc., joy site." -- That's job site, I would imagine, -" by returning the trailer ownership to Thomas McNamara, dated June 5, 1972, Harry Goberman; Alex Gniazdowski."

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BY MR. RITCHIE:

Q Now, is the word trailer spelled correctly or incorrectly on there?

A On which one?

THE COURT: The registration --

MR. RITCHIE: I'll withdraw that question, your Honor.

THE COURT: I think it's on the long one, isn't it?

MR. RITCHIE: The document is in evidence. I won't go through that.

Q It's your signature as notary appearing at the bottom?

A That is right.

MR. RITCHIE: May I have just a second, your Honor?

THE COURT: Yes, sir.

(Pause.)

Q Now, with respect to Defendant McNamara's Exhibits AM and AN in evidence, do you remember the circumstances under which they were signed?

A Yes. They were signed in Tom's office. Is this what you are referring to?

Q Did you ever testify that you didn't recall

the circumstances under which they were signed?

A I don't think so. Other than what is, you know, like I don't remember all the details, other than the fact that Harry was there acting normal and that I come into the room just for a few moments.

Q That's what you do recall, that Harry was there acting normally?

A Right.

Q He was acting normally on June 5th; is that correct?

A That's right.

Q He was acting normally on June 28th; is that correct?

A Right.

Q And that's what you remember about both those incidents; is that correct?

A That is correct.

Q Was there anything unusual that occurred during either of those two incidents?

A No. I said, --

Q Approximately how many documents have you notarized in the course of your being a notary public?

A Over the ten year period? I have no way of knowing.

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Q Is it in excess of -- it would be several thousand documents, at any rate?

A I would say, yes. But I can't be specific.

Q You don't recall the specific details of any of them, of many of them, do you?

A Not of most, right.

Q And would you recall -- well, I have no further questions, your Hono.r

RECROSS-EXAMINATION

BY MR. GILLEN:

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Q Did you ever notarize a document for anyone that was physically, visibly injured, Mr. Gniazdowski?

A No, I haven't.

MR. GILLEN: I have nothing further.

MR. FISCHETTI: I have no questions of this witness.

MR. RITCHIE: No questions.

MR. LEONE: No questions, Judge.

MR. RITCHIE: No questions, your Honor.

THE COURT: All right, Mr. Gniazdowski, you are excused.

MR. RITCHIE: Your Honor, I must apologize. My next witness will be here at 2:00 o'clock. I'd ask that we could break ten minutes early. He had a

prior appointment.

MR. GILLEN: We will agree with Mr. Ritchie on that.

MR. RITCHIE: Thank you.

THE COURT: It is so easy to get counsel to agree. All right. We will recess now until 2:00 o'clock.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

(The following occurred in the absence of the jury.)

THE COURT: Mr. Ritchie, you were going to give the 3500 material on Taibbi.

MR. RITCHIE: Yes, your Honor.

THE COURT: Do you want to mark it after lunch?

MR. RITCHIE: Yes, your Honor, I do.

THE COURT: Okay. But can you give it to the lawyers now?

MR. RITCHIE: Yes, your Honor.

THE COURT: So that they can read it over the lunch hour.

You won't want them to have a good enjoyable

lunch.

MR. RITCHIE: I would, your Honor.

MR. MEISELMAN: Your Honor, I'm sorry to keep interrupting you this way -- I think it will be the last time.

THE COURT: May we call Kantor, Blodnick & Haber and also call George Haber, individually.

THE CLERK: Kantor, Blodnick & Haber. And George Haber. Is anyone here from the firm of Kantor, Blodnick and Haber or is Mr. George Haber present?

No response, your Honor.

THE COURT: Do you want to see if you can get them on the phone?

MR. MEISELMAN: I have someone trying that, your Honor.

THE COURT: You might have him tell them that if they do not respond to a Federal Court subpoena, they will for the first time learn what trouble really is.

MR. MEISELMAN: Yes, sir.

(Luncheon recess taken.)

HS:BD
lpml



AFTERNOON SESSION

THE COURT: You wanted to mark something first?

MR. RITCHIE: Yes, your Honor.

MR. LEONE: There will also be an application.

MR. FISCHETTI: Two.

MR. LEONE: It really rolls into one.

MR. FISCHETTI: Your Honor, the next witness for the Government I'm informed will be Mr. Taibbi.

As your Honor will remember, he was the construction superintendent. Mr. Ritchie and I have discussed this out of the presence of the Court and I would like to memorialize our understanding on the record in case something occurs.

Mr. Taibbi last time misidentified -- if that is the correct word -- two people in this courtroom as being on the construction trailer on June 5th, Rocco Merolla and Angelo Merolla. That's who he identified in the courtroom. We had a big to-do then and the jury was excused and we entered into a Wade-Gilbert hearing for approximately a day and a half.

Mr. McMullen testified and Mr. Taibbi testified --

MR. RITCHIE: Half a day.

MR. FISCHETTI: Excuse me, a half a day.

-- outside the presence of the jury and your Honor's ruling, at the end of that hearing was that

Mr. Taibbi would not be allowed then to correctly, if he could, identify Mr. DeLiso or Mr. Al Merolla -- Alphonse Merolla, Ms. Seltzer's client --

MR. LEONE: Alphonse M. Merolla.

MR. FISCHETTI: -- in this courtroom because of the prior identification by means of a photographic display showed to him by Agent McMullen.

I believe your Honor ruled -- I show you in the record --

THE COURT: We felt that the well had been poisoned.

MR. FISCHETTI: That is right.

MR. RITCHIE: That basically is a correct rendition of what occurred.

MR. FISCHETTI: Mr. Taibbi is going to testify now. What I am trying to avoid is another Wade hearing or another problem with his identification this time.

MR. Ritchie has informed me that Mr. Taibbi, to his knowledge, will not identify Mr. DeLiso.

THE COURT: He will not be allowed to.

MR. FISCHETTI: He will lead him to that area so it is not blurted out that this is Mr. DeLiso, if he was actually there.

I am trying to guard against an in-court

identification now which Mr. Ritchie agrees will not happen. I do not want it to happen by accident.

MR. RITCHIE: I do not want it to happen by accident either.

I did not tamper with the witness, but I did tell him for legal reasons I did not want him pointing out anybody, either of the two individuals in the trailor that morning.

MR. FISCHETTI: That solves my problem.

Mr. Leone has another one.

MR. LEONE: I think from my understanding of my conversations with Mr. Ritchie, the next witness, Mr. Taibbi, will make an in-court identification of my client, Alphonse Merolla.

I have been supplied with a 302 which states that he was shown a group of photographs and that he picked out the picture of Alphonse Merolla, my client, as resembling an individual who had accompanied Alphonse M. Merolla on the job site on several occasions. I think that in view of the testimony Mr. Taibbi gave at the prior trial -- at the Wade hearing at that trial -- there is reason to believe -- at least I have reason to believe -- that he should not be allowed to make this in-court identification as it is expected by Mr. Ritchie he will.

At that Wade hearing, and the record so indicates, Mr. Taibbi stated that he did -- in addition to picking out photographs of Alphonse Merolla -- picked out a photograph of one Philip DioGuardia as being one of the individuals or an individual who he had seen accompanying Alphonse Merolla to the job site.

Philip DioGuardia is also a gentleman who weighs approximately 300 pounds, which is approximately the weight of my client. I think, Judge, before he is allowed to make a positive identification in this case, we should have a Wade hearing to see whether or not this identification would be in any way tainted by the photographs that he was shown -- just what photographs were shown to him on the last occasion by Agent McMullen. That is about it, your Honor.

MS. SELTZER: Your Honor, my understanding -- and I wasn't at the last trial -- is that the person's name was identified --

THE COURT: Nobody laid a glove on your boy.

MS. SELTZER: That is what I am confused about. I would assume in some sense we are precluded from cross-examining in the sense it is not going to be brought out that he identified the wrong person --

THE COURT: If you want him to be identified --

MS. SELTZER: When he says "Al Merolla -- that Al Merolla came with friends," what inference is the jury expected to get from that?

MR. LEONE: We were through this.

MS. SELTZER: If this Al Merolla was not the person picked out and I am not able to cross-examine and ask, "Didn't you pick out somebody else" --

THE COURT: There was one part of the Fischetti-Ritchie agreement I did not quite grasp, that is how he could testify as to who was involved at all?

MR. RITCHIE: I had thought o' that possibility in not eliciting any response whatsoever as to a prior mis-identification, perhaps that's what your Honor wishes me to do.

THE COURT: You see, what I think Ms. Seltzer got from what was said here -- after all, Mr. Fischetti was talking as to Mr. DeLiso -- is that Mr. Taibbi will say something about Alphonse M. Merolla as if he had a right to, without being afraid to point and say, "Yes, the gentleman with the glasses," and whatever color necktie that is -- you will have to ask your wife -- I do not know; is that right?

MR. RITCHIE: Your Honor, what was decided at the prior trial was that Mr. Taibbi would be able to make an identification of other co-conspirators and

through the course of his testimony it was apparent that this individual --

THE COURT: We are relying entirely on other poeple's testimony. Then Government appeared -- that was the same people at three or four different times on the same day -- Mr. Taibbi quite unable to identify a living soul, but Government having identified them, and the circumstantial evidence being such as to put them -- to establish identity, meeting to meeting. Is that about the way you recall it?

MR. FISCHETTI: Frankly, I recall your Honor adding the ingredient -- if I may use that word -- since he did pick out Rocco and Angelo Merolla, even i he were mistaken or not mistaken, he was pointing to individuals who were in fact named to defendants in this indictment and therefore whether or not they had conversations with him -- even in his own mind they were the individuals. It would be binding on everybody else, no matter who had the conversation, Angelo and Rocco or John DeLiso and Al Merolla --

THE COURT: That sounds a little more confusing than I usually am.

MR. RITCHIE: Your Honor mentioned a conspiracy and the effect of the conspiracy. I do not think your Honor directly attributed it to Rocco and Angelo.

Mr. Taibbi in the presence of the jury, the last time, and at the hearing did state that he was incorrect in his identification of Angelo and Rocco.

I find it hard to conceive that your Honor based it on the rationale set forth.

MR. FISCHETTI: Maybe that is true, based on the mis-identification. If I can say this -- am I stepping on your toes -- Ms. Seltzer is saying she does not see why she cannot ask Mr. Taibbi, "Didn't you in fact -- weren't you asked to identify Alphonse Merolla and didn't you in fact identify someone else?"

That has to do with what we discussed.

MS. SELTZER: He can bring out the other part where he changes his testimony --

THE COURT: Wait a minute. If he never fingers your boy --

MS. SELTZER: He is using the name Al Merolla.

THE COURT: We do not know whether he is or is not. That is why I said I do not understand Mr. Ritchie and Mr. Fischetti understood, because I do not see how he can.

If all that you tell me is right, all he can say is that two gentlemen came to the trailer.

MR. RITCHIE: One identified himself as Al Merolla.

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THE COURT: One claimed that he was Al Merolla.

MR. RITCHIE: Then there will be a later conversation in which --

THE COURT: In which everybody gets together and we finally have the jamboree.

MS. SELTZER: Is there any way that I can merely ask him, in fact, were you asked to identify Mr. Al Merolla at the previous proceeding and, in fact, did you pick out somebody else and leave it at that?

MR. RITCHIE: I feel that opens the door for me, your Honor. I may be wrong.

(Continued next page.)

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THE COURT: I can say to you again, if he has not hit your man, there is no way you can counterpunch -- if he has not swung a punch, you cannot counterpunch.

MS. SELTZER: Al Merolla is sitting here.

THE COURT: You have not listened to a word I said. He is not going to identify him by name, index finger or otherwise.

MS. SELTZER: I thought he said that he was going to testify that the man said his name was "Al Merolla."

THE COURT: That is all he can say.

MR. LEONE: THat's identifying him by name.

THE COURT: That is what the man said to him. The rest of it depends on whether or not there is other evidence in the case, not that of Taibbi, to connect the man who said he was Al Merolla with Alphonse M. Merolla.

There's Government's testimony that for what that is worth already in the record.

MS. SELTZER: Then I would request that I be permitted --

THE COURT: Ask anything you want. I am not going to repeat myself. Let us get the Jury in and let us get started.

MR. LEONE: Judge --

THE COURT: Tell them we are going to have a

hearing.

MR. MEISELMAN: If the Jury is not going to come out at this point, Mr. Ritchie and I had a conversation during the luncheon break in which I asked Mr. Ritchie whether he had cautioned Mr. Taibbi with respect to your HOnor's ruling concerning the words to which we objected.

THE COURT: The what?

MR. MEISELMAN: The words which Mr. Taibbi has stated were said by Thomas McNamara concerning Mr. Goberman.

THE COURT: Yes.

MR. MEISELMAN: Concerning your Honor's ruling with respect to the caution of Mr. Taibbi, Mr. Ritchie stated that he so-cautioned the witness, but that the witness would only use the statement that Mr. Thomas McNamara had used religious --

THE COURT: Can't he say he called him by some name or other or something like that?

MR. RITCHIE: Fine.

THE COURT: Something deroqatory.

MR. MEISELMAN: Thank you.

MR. RITCHIE: May I speak with my witness for a moment?

THE COURT: Yes.

(Pause.)

THE COURT: I guess we need Agent McMullen.

MR. RITCHIE: He is getting the photogrpahs.

(Pause.)

MR. RITCHIE: Your Honor, Agent McMullen is having difficulty locating the folder. May I have five minutes to find him?

THE COURT: Yes.

(Recess taken.)

MR. MEISELMAN: May I advise the Court that I had received a message that Mr. Haber is expected to be here shortly after 4:00.

THE COURT: He will be here at 4:15.

MR. RITCHIE: Mr. McMullen turned over a group of photographs to me. I cannot locate them at this time.

THE COURT: Mr. Leone moves to suppress you.

MR. LEONE: I am afraid so.

THE COURT: Why? Do you have any idea where they could be?

MR. RITCHIE: They are misplaced somewhere. I can recall seeing an Exhibit envelope with them very recently. However, I know the Court wants to get on.

THE COURT: You will have to stay totally away from any identification in any shape or form.

MR. RITCHIE: Except as with respect to Thomas

McNamara.

MS. SELTZER: I did nothear what you said.

MR. RITCHIE: Except with regard to Thomas McNamara.

MR. LEONE: Stay away from identification until we have this thing.

THE COURT: All right.

MS. SELTZER: I have on suggestion if your Honor would consent:

Perhaps when Mr. TAibbi testifies and refers to this person as Al Merolla, if he could refer to him as the person who identified himself as Al Merolla --

THE COURT: That is what he will testify to.

MS. SELTZER: But he will use it repeatedly --

THE COURT: He can say this man. Let us go ahead.

MS. SELTZER: Would you instruct him?

MR. RITCHIE: I will.

(Jury Present.)

MR. RITCHIE: The Government would call as its next witness Mr. Gary Taibbi.

G A R Y F. T A I B B I, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Gary F. Taibbi, T-a-i-b-b-i.

DIRECT EXAMINATION

BY MR. RITCHIE:

Q Mr. Taibbi, you are wearing a neck brace right now.

Can you tell us how that happened?

A I was involved in an auto accident on July 1st, of this year.

Q Of this year?

A Yes, sir.

Q Now, how old are you?

A Twenty-nine.

Q Are you married or single?

A Married.

Q Do you have any children?

A Two children.

Q Now, are you presently working?

A I am presently on temporary leave of absence from a construction firm.

Q What is the name?

A Schumacher and Forrell.

Q How long have you worked there?

A Since March of this year.

Q Until the time of your accident?

A Yes.

Q How were you employed there?

A As a construction superintendent.

Q Would you spell the name of your firm?

A s-c-h-u-m-a-c-h-e-r and F-o-r-r-e-l-l-.

Q You were employed as a construction superintendent?

A Yes.

Q Where were you employed during the Spring of 1972?

A In Port Jefferson for HarMac Construction.

Q What was your position with HarMac?

A Construction superintendent.

Q What were your duties as construction superintendent for HarMac?

A To supervise the construction of the facility, to supervise the individuals on the job.

Q How many individuals were working for you?

A Maximum I would estimate to be around 12, 15.

Q When you say maximum, were there different numbers of individuals?

A Changed daily.

Q Did there come a time when you had no one working under you?

A Yes.

Q When was that?

A After the Town of Brookhaven put a stop order on

the construction.

Q Did you continue to work there?

A Yes, I did.

Q What did you do?

A Odds and ends, anything to keep busy, scraping the floor, chopping concrete, sweeping the floor, anything just to keep busy.

Q Did there come a time when you stopped setting foot on the job site itself?

A Yes.

Q When was that?

A I know that would be shortly thereafter when the Brookhaven Town shut down the job -- sometime in June, I believe, middle of June.

Q You were still employed?

A Yes.

Q Did you receive -- who was your actual employer?

A My boss was Harry Goberman.

S fls (Continued on next page.)

BS:MM
T2R1
PM

Q And did he give you any instructions on what you were to do?

A Yes. Around the time the town closed down the job, he told me to keep an eye on the place and report back tohim on it, you know, any activity that was going on.

Q What was HarMac building at that time?

A A Buick or General Motors dealership for McNamara.

Q Do you know the proprietor of McNamara Buick?

A Thomas McNamara.

Q Do you see that individual in the courtroom today?

MR. MEISELMAN: The identification is conceded, your Honor.

A The gentleman in the blue suit.

MR. RITCHIE: Let the record reflect that the witness has identified Thomas McNamara.

Q During the course of your employment, did you ever have occasion to see Thomas McNamara on the job site?

A Yes, almost on a daily basis.

Q And do you recall the date that you began working on the McNamara job?

A I believe it was May 25.

Q When was the first time you saw Thomas McNamara on the job site?

A It would be onmy first day that I started working there, May 25.

Q During the course of your employment at HarMac, did you ever have occasion to have words with Thomas McNamara?

A Yes.

Q Do you recall when that was?

A Somewhere around the very beginning of June, possibly the first, second; most likely the second, I believe.

Q Did you in the course of your duties as construction superintendent, did you maintain a daily log of your activities?

A Yes, I kept a daily report.

Q From that daily report can you establish the date that you had words with Mr. Thomas McNamara for the first time?

A I believe I can, yes.

Q I show you what has been marked as 3500-17. I would ask you to look at that.

THE COURT: Are they his daily reports?

Q Can you identify them?

A Yes, I can identify them as my daily reports.

Q From those daily reports can you establish the date that you had words with Thomas McNamara?

A I'm just trying to get them in a chronological

order. I would say on June 2, 1972.

Q And can you tell us what if anything occurred at that time?

A We had a verbal argument as to the method in which I was pouring concrete. Mr. Tom McNamara didn't like the way I was pouring it.

Q Can you tell us what he said and what you said.

A I know that in the course of our argument he at one point or another told me to stop pouring the concrete, he would not accept it, after half of it was poured.

He said that there was -- the concrete was being poured wrong, he wouldn't accept it, I'd have to chop it out after it set up.

I told him to mind his own business, read his construction book, which he always had on him, let me do his job and for him to sell his cars, words to that effect.

Q Later that day did you have occasionto again see Mr. McNamara?

A Yes.

Q And at that time was he alone or with anyone else?

A No, he was with other individuals.

Q And at that time did you recognize any of the individuals he was with?

A Yes, I did.

Q How many individuals was he with?

A Approximately five or six.

Q Of those, how many did you recognize at that time?

A On a name basis, I'd say I recognized approximately three of them. I had seen the others. I didn't know their names.

Q And what if anything occurred at that time?

A Well, at that time I was on the construction site and I believe Mr. McNamara was sitting in his car, as he normally did -- there were a group of individuals around him on his side of the car and one of them, who at that time identified himself to me as Al Merolla, indicated for me to come over.

So I went over to them and that's when the guy who identified himself to me as Al Merolla started, you know, giving me verbal abuse saying, "We don't want you to give the old man any more fucking lip. WE don't want you to argue with him any more. You listen to him, don't give him any more shit." Words to that effect. "If you do, we're going to come looking after your ass. We know where you live."

Q Had you ever seen this individual before?

A Yes.

Q When was the first time you had seen this individual?

A Some time between May 25, when I started, and this June 2nd, incident, somewhere in between there.

Q And on that first occasion that you saw him, what if anything did occur?

A I was in my construction trailer, which is on the site. That individual, who later on identified himself as Al Merolla, and another individual, who I know understand to be John --

Q Well --

A All right.

Q Let's not --

A In any event, they both came into the trailer, two individuals came into the trailer and I know that I was preoccupied with something, I was in the front of the trailer.

These two individuals moved to the back of the trailer. After a short while my distraction was done, because I know they indicated to me to come into the back of the trailer and I went in the back and I know that the guy who introduced himself to me as Al Merolla introduced himself and he asked me, you know, was the building going up according to the plans. I said yes.

He asked me if it was going up according to the

specifications, that's what he said, and I said yes, because I didn't know who they were at that time.

And so I asked him who he was and he told me that he is Al Merolla. And then he went on to say that he knows what kind of a guy Harry Goberman is, all kinds of slurs about him. He was calling him oddball names and things.

He said, "We can't get hold of Harry Goberman." In other words, they were insinuating to me that they had troubles --

MR. GILLEN: Objection to what they were insinuating, your Honor.

THE COURT: They were trying to get hold of Goberman and said they couldn't?

THE WITNESS: Yes. I explained I was the superintendent, I only worked for a living, I didn't have any interest in this company or the job. I worked on a daily basis, a weekly basis.

Q What if anything did they say then, did this individual who identified himself as Al Merolla say?

A The individual who identified himself as Al Merolla said to me, "We can never get a hold of your boss, Harry Goberman," with slurs thrown in, "We know where you live." We own something to the effect -- I or we have a 25% interest in this place, and he said "If it's not done correctly, and if

it's not done, you know, done on time, needless to say, McNamara can't sell cars and make his money," and they in turn can't get their 25%. He said words to the effect, as I mentioned, "We can never get a hold of Harry Goberman but we know where you live and we'll come looking for your fucking ass. You can consider this a threat, go to the police, the FBI, I don't give a shit -- I'm Al Merolla."

Q And now, directing your attention again to June 2nd, did you say either of those two individuals who came up to you the first time with Thomas McNamara on that date?

A Yes.

Q Now, after June the 2nd, did you at any other time see these individuals?

A Yes.

Q When was the next time you saw the two individuals?

A It would be the next working day after the June 2nd, incident, which would be June 5, I believe, on a MOnday.

Q And onthat occasion where did you see these individuals?

A On the job site.

Q Where on the job site, if you recall?

A I don't recall exactly where. I knew that they were on the job site, either in front of my trailer or in my

trailer.

Q And at that time did you have any conversation with either of these two individuals?

A Yes.

Q And what conversation did you have?

A I believe that conversation was about them wanting to get hold of Harry Goberman.

Q What did they say to you and what did you say to them?

A They asked me where was Harry --

Q Specifically, which of the two individuals asked you?

A The gentleman who identified himself to me as Al Merolla.

Q Asked you what?

A Where was Harry Goberman.

Q What if anything did you then say?

A I said what I always said to them or anyone, I didn't know. I could never get hold of them when I wanted to.

Q Then what happened next?

A They told me to try and locate him, get on the phone and try to get him.

Q So did you then get on the phone?

A Yes, I did.

Q And did you get a hold of Mr. Goberman?

A Yes, I told them --

MR. MEISELMAN: Objection, your Honor.

THE COURT: Overruled.

Q Did you get a hold of Mr. Goberman?

A Yes, I spoke to him on the phone and I told him these two guys were here, what the hell is going on, based upon, you know, what had taken place prior to them being here; I wanted to know what was going on, why were they always here.

Q Without relating what Mr. Goberman said, what else did you say to him?

A I believe I said that McNamara's hoods are here.

Q Did you tell him to do anything?

A Come on down, I know that.

Q And did you subsequently see Mr. Goberman that day?

A Yes, I did.

Q When did you first call him on June the 5th?

A I called Harry in the morning and he came down in the afternoon, early afternoon.

Q Now is that as best you can recall?

A Yes. I know that I called late in the morning and he came down shortly after.

Q And when he came down, what if anything did you say to him?

A I believe at this time I was outside the trailer somewhere and I pointed to the trailer, told him the two guys were inside the trailer who wanted to see him.

Q And where if anywhere did Mr. Goberman then go?

A Into the construction trailer where the other two guys were.

Q And did you subsequently see Mr. Goberman exit the trailer?

A Yes I did.

Q And was he accompanied by anyone?

A By these two other individuals.

Q And where if anywhere did you then see them go?

A Well, Harry walked away from them and he came to me and he says, "Everything will be all right," or words to that effect, "We are going for a meeting." And that's it.

They got into their cars and took off.

Q AT any time did you have a conversation with this individual who identified himself as Al Merolla about any of your construction equipment?

A YEs, there was one occasion that sticks in my mind. I was in my trailer and he came in and he sat down at

my desk and he noticed a surveyor's case, a green case that was on the floor, and he asked me what it was and I told him that it is a surveyor's level, I think I said, or a transit, words to that effect, and I think he said, "Whose is it?" And I said, "It's my bosses, Harry Goberman's." Then he said, "No, it's not, it's mine." So I told him -- I says, "No, it's not, it's Harry's. I know the guy who sold it to him". He says words to the effect, "Well, it's my fucking level, I'm going to take it."

And I remember telling him, "Well, look, if you take it I won't even be here in the morning because I can't continue without it." And so I know that he told me, "Well, all right, I'm going to leave it here. Remember it's mine and when I want it I better get it, otherwise I'm going to come after your ass."

Q After this,conversation did you have a conversation with anyone else about that transit?

A Yes, John McNamara.

Q And when was that in relation to this conversation?

A After that. After the conversation.

Q And with respect to that conversation, what did you say to John McNamara and what did John McNamara say to you?

A This was on a date after the June incident and

John McNamara I know came into the trailer. We had words, talking back and forth, and I know that he noticed the surveyor's case and he said words to the effect, "That's Al's." I said, "No, it's not, it's Harry's." He says, "Well, Al wants it. I'm going to take it." I said, "No youre not. It's Harry's. I need it." I said words to the effect, "I'm tired of all this."

He says, "Do you want me to call up Al?" So I told him, "What are you doing, threatening me?" He says, "You remember what Al said the last time? When he wants it he better get it."

Q Are you familiar with the cost of transits?

A I know that that instrument brand new would cost around $1500 and that instrument I personally worked on with other employees.

Q Now, as a result of that conversation with John McNamara, what if anything did you do?

A I considered it a threat so I put it down in my daily report.

Q Can you look through your daily report and find out what date it was you put that notation down?

A It's on my June 9, 1972, Friday daily report.

Q Would that have been the date of this conversation with John McNamara, when it occurred?

A Yes.

Q Could I have that June 9, report?

A Yes.

MR. RITCHIE: Mark this, please.

THE CLERK: Document marked foridentification Government's Exhibit 19.

(So marked.)

Q What was the note thatyou made of this conversation with John McNamara?

A You want me to read it verbatim?

Q Yes, please.

MR. FISCHETTI: Objection to anything being read not in evidence.

THE COURT: Maybe you can use it to refresh your recollection as to what occurred.

THE WITNESS: I can --

MR. RITCHIE: I withdraw the question.

A All right. I put down that I had been ordered by --

THE COURT: No. Just read it over to yourself and see if that refreshes your recollection.

THE WITNESS: It does refresh my recollection.

THE COURT: Now search your memory and tell us as best you can what occurred on that occasion.

THE WITNESS: I had been ordered on that date by John McNamara to turn over the level to his friend Al or else.

Based upon previous conversations with all the individuals --

MR. GILLEN: I object to the operation of his mind.

THE COURT: He can testify to only mental operations if they are relevant.

MR. GILLEN: I move to strike as unresponsive. He has been asked what was said.

THE COURT: The objection to responsiveness belongs to the examiner.

(Continued on next page.)

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Q Can you --

A I was only going to say, the "all else " to me at that time I considered a threat, based on previous conversations.

Q Do you recall being present during a conversa- between Harry Goberman, Thomas McNamara, John McNamara and an electrical foreman was there also?

A Yes.

Q What, if anything, was said at that timeby any of the parties present?

MR. FISCHETTI: May we have a date, sir.

THE COURT: Yes.

Q Can you fix a date with precision?

Did you make any notations in your notes?

A No, probably not.

THE COURT: If he can fix it in sequence of time?

THE WITNESS: That's what I'm trying to do.

Q Mr.Taibbi, was --

A Okay.

Q Was it prior to or subsequent to the time that you saw Mr. Goberman with Mr. Merolla -- with the individual whom you have identified -- who identified himself --

THE COURT: Who called himself, whether it was or not.

MR. RITCHIE: Yes sir. I'm very sorry.

Q Who identified himself as Al Merolla?

A It was after that incident.

Q Was it prior to or subsequent to the time that--

A If --

Q That the job site was closed down?

A It was prior to. It was prior to that occasion.

Q So it was in between June 5th and June 20th; is that correct?

A Yes sir.

Q Can you fix more precisely the date?

A If I could have a chance to go through my reports, I'd try.

No, I can't. All I can say is that it was between June 5th and June 20th. June 20th, according to my records is when the town building department issued a stop order.

Q You do recall one specific conversation, do you not, inthat time frame?

A Yes.

Q What, if anything, did either Mr. Goberman or Mr. McNamara -- Thomas McNamara or the two other individuals present say?

A I know that on one occasion I was out on the construction site, in between the building and the trailer.

Harry approached me. Tom McNamara came over and there was shortly an argument.

I walked away twoards my trailer, into my trailer to do my paperwork.

A short time later, Harry started coming into the trailer, Thomas McNamara behind him and John McNamara.

Harry is in the office and he was sitting down at my desk and Tom McNamara kept on yelling at him, cursing at him, calling him all kinds of names, vulgar names all kinds of names.

Harry -- I don't remember Harry saying anything indecent, you know, yelling back at him or anything.

From what I remember, it was a one-sided argument. Thomas McNamara doing all the yelling.

Thomas McNamara was turning red and he was almost foaming at the mouth. Whathe was saying --

Q Well, --

A All right.

Q Don't interpolate. Just detail physical indicia.

A Physical condition?

Q Yes, please.

Q He was red. He was getting almost incoherent.

I told him to calm down. I was afraid he was going to have a heart attack.

Q What, if anything did John McNamara --

A His son John told him to calm down. The foreman told him to calm down, he'll have a heart attack.

He turned around and out of the clear blue sky he says, "I don't give a shit if I have a heart attack or anything, Harry. If anything should happen to me, I've got a contract out on you, you little bastard."

Words to that effect. "I've got a contract out on you."

Q What did you understand him to mean by the word, "contract"?

A What did I understand him to mean?

Q Yes.

A That he had made a prior arrangement to have him killed.

Q With respect to June 5th, the date that you first saw Harry Goberman with the individual who identified himself to you as Al Merolla, what is your best recollection as to the time that Harry Goberman came down to the job site?

A Sometime close to noontime.

Q Have you testified previously concerning that incident?

A I believe I did, yes.

Q Would your testimony have been -- I'll withdraw

that.

Was your recollection better than than it is now?

A I would say so, yes. It was fresher in my mind.

Q Now I show you your testimony of January 14, 1974, at page 1,049. I ask you if that would refresh your recollection?

MR. LEONE: What was the question?

A (Continuing) Yes, it does.

MR. LEONE: Your Honor --

MR. GILLEN: What page was that?

THE COURT: What was the question?

MR. RITCHIE: 1,049.

The question would be lines --

MR.MEISELMAN: What was the question put to the witness, sir?

MR. LEONE: Right.

MR. MEISELMAN: Leading to the --

THE COURT: Why is he getting his recollection refreshed?

MR. GILLEN: Yes.

BY MR. RITCHIE:

Q Are you certain of that time?

A Yes.

Q What was the time thatHarry Goberman came down

to the job site?

A I called Harry in the morning and he came down shortly thereafterwards.

THE COURT: Which incident are we talking about now?

MR. RITCHIE: This is June 5th, your Honor.

THE COURT: Oh.

Q Now, after the job site closed down, after the job was posted, did you ever have occasion to speak with Mr. Goberman after that time?

A Yes.

Q Did you have occasion to speak with him in July of 1972?

A Yes, I did.

Q Do you recall on what date in July you spoke with Mr. Goberman?

A I remember going through my daily reports when I was trying to find something for you and I think July 7th, was the date I had indicated.

Q On that occasion what, if anything, did Mr. Goberman say to you?

MR. LEONE: Objection, your Honor.

MR. RITCHIE: Your Honor, I'd like to make an offer of proof at sidebar.

THE COURT: All right.

(Sidebar follows.)

THE COURT: All right.

MR. RITCHIE: Mr. Taibbi is expected to testify -- should he be excused, your Honor? He may be able to hear us?

MR. FISCHETTI: He can't.

THE COURT: I do not think he can.

MR. RITCHIE: Is expected to testify that on that date Harry Goberman told him that he had been beaten by Tom McNamara's hoods and required to sign a contract release.

I submit that it's properly introduceable as a prior statement antidating motive, motive being the litigation that he subsequently entered in in August of 1972 or first began discussion in August, 1972.

MR. GILLEN: Our position is, your Honor, that this man's motive for litigation either was on June 28th, or long prior to June 28th, that he went to a doctor, went for treatment for his alleged injuries. He went at the behest of an attorney. For some reason, to get some type of statement.

THE COURT: We do not have any testimony. We do have --

MR. GILLEN: We have his testimony. We have Harry Goberman's testimony.

THE COURT: Went in August.

MR. GILLEN: No. He went June 28th.

THE COURT: That is another matter.

MR. GILLEN: RIght.

MR. RITCHIE: The doctor.

THE COURT: He went to a lawyer who prepared -- no. That he testified that a lawyer prepared that letter of June 29th, is it?

MR. GILLEN: Yes.

MR. RITCHIE: Yes.

THE COURT: So that at that time he knew the importance to him of not being bound by the contract release because the contents of his letter of June 29th, are almost exactly the same as the contents of the letter that Timothey Shea had -- or O'Sullivan, whoever it was --

MR. RITCHIE: It was somebody else.

THE COURT: -- had prepared for Mr. McNamara to send out with the notice if termination in it, which I think was sent out on June 24.

MR. MEISELMAN: Something like that, your Honor.

MR. RITCHIE: Yes, your Honor.

THE COURT: About June 24 and was received on or about June 26.

MR. MEISELMAN: 26th.

MR. RITCHIE: Your Honor, he stated in cross-examination that on June 28th, he had not decided to file a law suit. All he did --

THE COURT: I am not talking about the silly meeting. I am talking about the case of contract.

MR. RITCHIE: Your Honor, I don't believe that the case on the contract is really -- is really relevant with respect to the question of motive to testify in this case, not for -- not because of your Honor's ruling with respect to the relevancy of the contract.

THE COURT: It is perfectly apparent that he would have to get out of that contract release reciting the payment of $25,000 consideration and his receipt of it.

He would have to get out of it somehow.

To take the position that it had been beaten out of him, duress, was an obvious -- the easiest and best way.

The only other defenses would be that he was drunk or that he was mislead, or any possibility of claiming either --

MR. RITCHIE: The only --

THE COURT: -- duress. They were -- may be behind on t he payments but I do not know. They were behind theoretically on June 1st.

MR. GILLEN: Way ahead.

MR. MEISELMAN: Ahead.

THE COURT: Wasn't June 1st, due on June 11th?

MR. GILLEN: No sir. He was still way ahead.

What he had been doing was loading the requisitions.

THE COURT: That is another question.

As far as the requisitions were concerned, they were behind on the requisitions.

MR. GILLEN: On the face.

THE COURT: If the requisitions were true to life.

MR. GILLEN: That's right.

MR. MEISELMAN: And if you don't consider the --

THE COURT: And certified by the architects who--

MR. GILLEN: Supervising architect.

THE COURT: -- who was later claimed to have been in his pocket.

MR. GILLEN: Sold the steel. He sold the steel. The architect sold the steel.

THE COURT: Speaking -- just like Governor

Rockefeller.

MR. MEISELMAN: Also considering the fact --

THE COURT: You know, one of the funniest things, how embarrassing rich people can be who are so rich that they've forgotten what it feels like to be rich.

MR. MEISELMAN: I appreciate that.

MR. RITCHIE: Your Honor's ruling is that with respect to this conversation dated July 6th, it would not be admissible as antidating motive?

THE COURT: Well, I think -- see, if we're going to have O'Sullivan's testimony again, no claim of being beaten up, the Gill testimony of no claim that he was beaten up --

MR. RITCHIE: That was not Mr. -- Detective Gill's testimony at all.

THE COURT: I think they claimed it is.

MR. RITCHIE: Mr. Gill -- well, I won't even dispute that point. I don't believe it's his testimony.

THE COURT: If that is going to be testimony in this case, I think this could come in.

Now, there is no use in recalling Taibbi. I think it's only if they're going to pursue these other ones, because I had understood --

MR. RITCHIE: I intend to have Mr. O'Sullivan.

THE COURT: -- that Mr. Gillen intended to call Gill.

MR. GILLEN: Gill said he did make a claim on the 5th.

The confusion there is, your Honor, Gill went to the brother Allan to check to see if there was a gun and Allan on two occasions said there was no gun.

MR. RITCHIE: That's in dispute.

MR. GILLEN: That's his testimony.

Gill did say that this guy Goberman made a complaint. Gill did say that.

THE COURT: You see.

MR.RITCHIE: I'll --

THE COURT: No use in getting it wrong.

MR. RITCHIE: I will give up this testimony, your Honor. I think there is some other testimony that I will try to --

THE COURT: Let's reserve it. Is TAibbi around?

MR. RITCHIE: Yes, your Honor.

THE COURT: He is still at liberty?

MR. RITCHIE: Yes, he is, your Honor.

THE COURT: I think it would then be set up.

MR. RITCHIE: Your Honor, I'd like to ask him one

question that I also would like to make an offer of proof on.

That's whether he has a criminal record.

THE COURT: Has he?

MR. RITCHIE: I believe that Ms. Seltzer opened the door yesterday afternoon when asking --

MR. GILLEN: Who?

MR. RITCHIE: Gary Taibbi.

By asking Mr. Goberman whether he'd ever received -- whether he'd ever checked --

THE COURT: Yes.

MS. SELTZER: I was just asking generally.

THE COURT: It suggested a resume that Taibbi has filed. Made claims of education and qualifications, that he did not in fact possess and then there was something else in that context.

MR. RITCHIE: Or whether he had a criminal record.

MS. SELTZER: I asked if he ever went to college or if he went to that college. I asked him a whole bunch of things, the reason being whether he was more -- if he was as ineffectual as the people who hired him are. The people that hired Goberman are.

MR. RITCHIE: I think it leaves the impression, has opened the door to --

THE COURT: Are you sure he hasn't got one?

MR. RITCHIE: I don't know whether I'm going to ask the question yet, your Honor.

(In open Court.)

MR. RITCHIE: I'll withdraw that last question, your Honor.

THE COURT: Pro tem, anyway?

MR. RITCHIE: And ask to recall him.

THE COURT: If need be.

MR. RITCHIE: Yes, your Honor.

DIRECT EXAMINATION

BY MR. RITCHIE: (CONTINUED)

Q Mr. Taibbi, did you ever have a discussion with Thomas McNamara about ownership of the construction trailer?

A Yes.

Q What, if anything, did he say to you and what, if anything, did you say to him?

MR. FISCHETTI: May we fix a time, please, sir?

Q Can you fix a time in relation to the incident you've related concerning June 5th and the stop order on June 20, and May 25, your beginning date of employment, and June 28?

A I know it was in June. It was prior to the town issuing the stop order.

The only realm I could place is between May 25, when I started and the date the town stopped the job. I couldn't be more specific.

Q What did Mr. McNamara say to you and what did you say to Mr. McNamara?

A Somehow or another the conversation got to who owned the trailer, who owned the trailer, and I know that I told Thomas McNamara that as far as I knew, Harry Goberman owned it.

He said, "No, I own it." I said, "No, you don't because I know the guy that sold Harry the trailer."

MR. RITCHIE: Your HOnor, I have no further questions.

CROSS-EXAMINATION

BY MR. GILLEN:

Q Mr. Taibbi, referring you in time, sir, to June 5th, 1972. You described for the Jury that Harry Goberman came down to the job site and went into the trailer with two individuals; is that correct?

A Yes.

Q What were your working hours?

A Varied; sometimes 7:00 in the morning, sometimes 8:00 to 3:30, 4:30, sometimes 5:00 o'clock.

Q All right. Did Harry come back that day?

A Back that day from where, sir?

Q From wherever, on June 5th, after he had left with these two men?

A Could have. I didn't see him.

Q Didn't see him.

Did you see Allan Goberman that day?

A I don't recall.

Q Do you do most of your work in the trailer?

A Not really, no. I wouldn't say that.

Q Can you describe for the Jury, please, the job site? What are the dimensions of this job site?

A Maybe 600 frontage, possibly a little bit less. 800, 900 feet in depth.

Q Was it flat, flat land?

A Primarily, yes.

(Continued on next page.)

HS fls

HS:MM
T4R1

Q Was it cleared land?

A There were no trees or any shrubbery.

Q What about the building itself, had it been closed at this time?

A Yes.

Q You haveno recollection of seeing Allan Goberman on June 5th, this date when these two men came down and Harry Goberman came down?

A Yes, not to my recollection. I don't recall seeing Allan.

Q Do you know him?

A Yes.

Q Was he in and about that job during the time you were construction superintendent?

A I think I saw Allan maybe three times onthe job site, possibly four.

Q You were there from May 25th to in and about towards the end of June, beginning of July?

A Somewheres around there.

Q How many times did you see Harry Goberman on the job during this period of time?

A Approximately half a dozen.

Q So is it fair to say that you saw Allan almost as many times as you saw Harold?

A No.

Q Which is it, didyou see Harry half a dozen and Harry about three or four --

A No, I didn't.

Q I am sorry, Allan three or four?

A Possibly three or four times.

Q I see.

Although Harry Goberman was your boss, you only saw him to the best of your recollection maybe two times more during the whole period of your employment there, than you saw Allan Goberman?

A On the job site, that is correct.

Q Incidentally, these two men did they make any threats to you on June 5th?

A Not that I recall.

Q What did they say to you, these men?

A "Where's Harry?" I told them I did not know, he could possibly be in the office. They told me to call, tell him to get his ass down here. I called the office, got hold of Harry and I told him to come down.

Q Did you tell him anything else, Harry?

A Possibly.

Q Anything about that in your so-called log of June 5th?

A I'd have to look at it.

Q Would you please.

(Pause.)

A No record.

Q June 2nd, you said two men came down. What did they say to you on June 2nd?

A I beg your pardon?

Q What did those two men say to you on June 2nd?

A Asked me if the building was going up as to the plans and specifications, told me they knew what kind of individual Harry was. One of them said that I had better make sure it was going up to the plans and specifications. The individual at that time identified himself to me as "Al Merolla."

He introduced himself to me and said who he was. He said I could consider it a threat or whatever. I could go to the police, FBI, he didn't give a shit or words to that effect.

Q Did you consider it a threat?

A Yes.

Q Is that in your report?

A No.

Q Now, did you see these individuals prior to June 2nd, 1972?

A I would say no -- not to my recollection.

Q Didn't you testify that between May 25th, and June 2nd, you had seen the men that you saw on June 2nd -- did you tell us that a little while ago?

A I don't recall.

Q How long haveyou been a construction superintendent, Mr. Taibbi?

A I have been in a supervisory position since somewhere's around June or July of 1966.

Q How long haveyou been a construction superintendent, Mr. Taibbi?

A I would say since July of 1966.

Q Where did you first work as a construction superintendent, Mr. Taibbi?

A For the Town of Brookhaven, I would say.

Q When was that?

A Around July of 1966, approximately a year and a half, two years.

Q Is that what you were hired as, a construction superintendent?

A No, sir.

Q What were you hired as?

A An engineer.

Q An engineer?

A In the construction sense, I would say yes.

Q What education have you had to be an engineer?

A None.

Q You call yourself an engineer?

A Me personally?

Q Yes.

A Yes, among other things.

In my trade I am known as an engineer or construction superintendent.

Q How old are you, sir?

A Twenty-nine.

Q Now, back on -- page 895. I do not know the date. It is in January. Page 895, Mr. Ritchie.

Were you asked this question back in January of 1974 and did you give this answer, at line 17:

"Question: And sir, how long have you been in this field of employment, construction work?

"Answer: I have been a construction superintendent for ten years."

Were you asked that question and did you give that answer?

A I probably did. I do not know what you are reading from.

MR. GILLEN: Am I reading it correctly?

MR. RITCHIE: Yes, your Honor.

MR. GILLEN: Thank you.

THE WITNESS: The answer would then be yes.

Q What would it be?

THE COURT: That he did say it.

MR. GILLEN: Thank you.

Q How long haveyou been a construction superintendent, Mr. Taibbi?

A Since 1966 to now. Approximately eight years.

Q Now, how did you come to be hired by this fellow Harry Goberman?

A I sent out a resume to different contractors, one of whom was LenAl Construction. An individual who said he was Allan Goberman said he received it, but he didn't need anybody, but his brother -- but his brother was looking for somebody and we set up an appointment and I met Harry Goberman.

Q Would it be fair to say that you got the job from Allan Goberman?

A Indirectly I would say yes.

Q He was your initial contact?

A Yes.

Q If you know, was any of Allan Goberman's equipment used on this job?

A To my knowledge I do not know.

Q Any of the employees, were they employees of

Allan Goberman?

A Yes.

Q How many?

A To the best of my recollection approximately four.

Q Did they work there, these four?

A It varied.

Q Was there ever more than four?

A Not that I can remember, possibly.

Q Were you ever paid by Allan Goberman?

A No.

Q Or LenAl Construction?

A No.

MR. GILLEN: Excuse me one moment.

(Pause.)

Q You told us where you work now, is that correct, Schumacher and something?

A Yes.

Q Where did you work prior to working for this company --

THE COURT: You mean just before?

Q I assume you are not working now with your injury?

A Correct.

THE COURT: He is on the job, but he is on leave.

MR. GILLEN: Yes.

Q Who did you work for before you worked for your present employer.

THE COURT: Immediately before him?

MR. GILLEN: Right.

MR. RITCHIE: I was going to ask that counsel stand behind the podium.

MR. GILLEN: Yes, I am sorry.

A I was employed by a construction firm, Costanza and Sons.

Q What was your title there?

A Construction superintendent.

Q How long did you work there?

A I believe it was a little over two years, might have been two.

Q What years would that have been, sir?

A I left them in March of 1974. Would be two years after March -- prior to March.

Q Prior to March?

A Yes.

Q That would bring us back to March of 1972?

A Correct.

Q You were working as you say for Mr. Goberman on May 25th, 1972 -- at least up until July, 1972; is that correct?

A You lost me.

Q I know.

THE COURT: Mr. Gillen is pointing out an overlap to you; is that correct?

MR. GILLEN: That is correct.

A I know I was working for HarMac from May of 1972 to July or something of 1972.

THE COURT: When was your next employement after that?

THE WITNESS: I beleive Costanza and Sons.

Q Incidentally, did you see Mr. Goberman --

MR. GILLEN: Your Honor, I do not know if this is a convenient time for a break.

THE COURT: Very well. Let us try to make it just as short as we can. We have to break today promptly at 4:30, since it is Friday.

MR. GILLEN: Yes.

THE COURT: Please do not discuss the case with one another or anyone not on the Jury until it is given to you to decide.

(Jury leaves courtroom.)

MR. MRISELMAN: I would like to make some arrangements --

MR. HABER: Good afternoon, your Honor.

MR. MEISELMAN: As you know I advised you that I issued a subpoena to Mr. Haber. I would like to use the records that Mr. Haber has on the cross-examination of Mr. Goberman.

I would like to have an opportunity, however, to view those records that Mr. Haber has and at that time perhaps we may excuse Mr. Haber or make it at a convenient time, since it is not likely that we will reach him today.

THE COURT: Who?

MR. MEISELMAN: Mr. Haber.

THE COURT: He is here.

MR. MEISELMAN: May I look at his records?

THE COURT: Yes.

MR. HABER: If your Honor pleases, may I state this first:

I was subpoened by Mr. Meiselman's office, I believe, on Tuesday or Wednesday. On Wednesday evening I got a call from a Mr. Riley who professed to be Mr. Meiselman's partner, who told me I was not to come into Court today, but next week.

This morning I was called by Mr. Turke who professed to be Mr. Meiselman's associate, and was told not to come in today but next Tuesday. Thereafter I

was called by your Honor's law clerk -- by someone professing to be your Honor first, but whom I learned to be Mr. Meiselman or his associate.

Then I spoke to your Honor's law clerk that I was needed today and I would have to come in immediately.

THE COURT: Mr. Goberman is waiting inthe wings in case there is any further examination.

MR.HABER: Thereafter I came into this Court and I have certain files, all of the files which are mentioned in the subpoena.

All of these files pertain to a client of mine. There are certain privileges and rights I must invoke.

THE COURT: Whom does the privilege bear on?

MR. HABER: The client is Harry Goberman.

THE COURT: Is he still around?

MR. RITCHIE: No, your Honor. I hadn't known that your Honor wanted him here. I really hadn't. I would have kept him.

THE COURT: I do not know what kind of dream world I live in. I give instructions that are explicit and apparently nobody hears anything.

Where is he now, back down to his home?

MR. RITCHIE: He has gone out to his home. He

only lives out in Suffolk County. I had held him here until 1:00 o'clock to speak with him. I would have held onto him and he would have been amenable to us, your Honor.

I am really sorry. I apologize if your Honor had directed me. I didn't understand that it was your Honor's direction that he be available today in this courtroom.

I had understood your Honor to say that he would be available for further cross-examination.

THE COURT: Hardly sounds it at the moment. I do not know what to suggest to you, Mr. Haber. Perhaps you could tell us what is involved in the file -- I do not mean the content of the file, but what is involved.

MR. HABER: There are three matters in the file, both of which are as to Harry Goberman and/or HarMac Construction Company, Inc. as plaintiffs, and the defendants are the individuals I believe involved in this litigation or prosecution.

It contains the same parties.

THE COURT: It is at least possible that they might be of some relevance.

MR. HABER: I am not denying it.

THE COURT: I suppose the bulk of the file would

be your office copies of court papers.

MR. HABER: Yes.

THE COURT: I do not know if Mr. Meiselman has interest in those, since his client would have copies of the papers served.

I do not know what else Mr. Meiselman is interested in. I think generally he would like to fish in waters that he believes are deeply troubled.

MR. MEISELMAN: May I state why?

I subpoened the Pinger Bank. They advised on the service of the subpoena that they had turned over all of their records of Harry Goberman and HarMac to "HarMac."

On the deposition of Harry Goberman he stated that the payroll book, the ledger, etc., were in the possession of his attorneys.

Whether they are still there or not, I do not know. I would like to see the records of the bank and of HarMac if they are in existence.

THE COURT: Perhaps you could give us that information, Mr. Haber.

MR. HABER: I would say off the record --

THE COURT: Nothing is off the record.

MR. HABER: If your Honor pleases, I believe I

am bound by a privilege not to give any information of what is in my file.

THE COURT: That is quite wrong.

MR. HABER: I will obey your Honor's direction.

THE COURT: An attorney-client privilege does not extend to documents which have been subpoenaed as between a client and a third person such as a bank.

BS fls

(Continued on next page.)

MR. HABER: If your Honor please, I am not wholly familiar with this file, I am not the attorney in my law firm that has been handling it. I was subpoened to come here --

THE COURT: I want to know, is any of this material that Mr. Meiselman is talking about in the file, because what it is is something that would be directly under the control of Mr. Goberman, but which has been turned over to counsel, not as a confidential communication but for the use of counsel, such as bank records -- what was the other one?

MR. MEISELMAN: The payroll books and ledgers.

THE COURT: Payroll books. --

MR. MEISELMAN: Books of account.

THE COURT: None of these would be confidential communications.

MR. HABER: Certain of the records in the file have been turned over to the United States ATtorney's Office. What they are --

THE COURT: Will you look in the files and see if these things are in there?

MR. HABER: I certainly would, at your Honor's request, go through the file in the presence of both counsel.

THE COURT: Would you please hurry up and do it.

MR. HABER: Certainly.

(Recess.)

MR. MEISELMAN: Your Honor, May I make a statement for the record?

THE COURT: Yes.

MR. MEISELMAN: In the presence of Mr. Ritchie and Mr. Haber, I went through the files of Mr. Haber which he presented. There are a few papers which, with your Honor's permission and everyone's consent, Mr. Haber will give to the Clerk of the Court, subject to his receipt.

Mr. Haber has also indicated to me that either he or a representative of his office with the same or more knowledge would be present subject to our phone call.

May I also state, your Honor -- is that correct, Mr. Haber?

MR. HABER: Yes.

MR. MEISELMAN: -- That a search of all the files produced discloses no payroll book, no ledgers, no checkbooks, no books of account.

Is that correct, sir?

MR. HABER: Yes.

If your Honor please, the documents that were chosen from my file are those which I feel would be necessary to hold back because of a claim of attorney-

client privilege. However, since it is expected that Mr. Goberman would probably waive the privilege when asked, we have agreed to the compromise that these papers would be turned over to the Clerk of this court to be sealed by the Clerk of this Court until such time as Mr. Goberman does waive the privilege or such other direction has been issued from the Court and at that time the papers could be then turned over to, I presume, either attorney in this litigation.

MR. RITCHIE: I will have Mr. Goberman available Tuesday morning to state --

THE COURT: Very well. Let's get on with it.

MR. HABER: May I turn these over to the Clerk of the Court?

THE COURT: There he is.

MR. HABER: WIth the understanding, I hope, that they will be returned to my office at the conclusion of this trial.

THE COURT: Certainly.

MR. HABER: Thank you, your Honor.

THE COURT: I think you will find that the Clerk's office is only too glad to off-load when they get the chance.

(Jury present.)

G A R Y T A I B B I, resumes the stand.

CROSS-EXAMINATION

BY MR. GILLEN:

Q Mr. Taibbi, prior to being hired by Harry Goberman on or about May 24, or 25 of 1972, for whom did you work, sir?

MR. RITCHIE: Objection, your Honor, on the grounds of relevance.

THE COURT: Under what?

MR. RITCHIE: On the grounds of relevance, your Honor.

THE COURT: You may inquire.

A To the best of my recollection, I'd say it was Francisco and Jacobi.

If you are trying to find out my chronological work history, I can give it to you.

Q Would you please.

A From the start. I started with the Towne of Brookhaven in approximately June or July of 1966.

Q What was your title then?

A As an engineer.

Q What type of engineer?

A First of all, let me explain something. In construction --

MR. GILLEN: Your Honor, I most respectfully --

he wants to give his chronology, --

THE COURT: If the words needs definition in the context, he can give it.

A Let me explain what engineer is. You have a survey engineer, you have an engineer on a back load, you have an engineer on a crane; there is all kinds of engineers in construction. An engineer is not someone with a degree, not necessarily.

I was hired as a surveying engineer.

Q Were you a construction superintendent at that time?

A Would it be all right if I give my definition of a constru ction superintendent?

I don't know what yours is.

Q What is a construction superintendent, then, Mr. Taibbi?

A Superintendent is one who supervises, one who can -- one who is able to read the drawings and relate to them; one who informs the working men what to do in reference to the drawing; one who has responsibility; one who supervises.

As an engineer for the town of Brookhaven, I supervised the installation of drainage systems, catch basins, supervised typography, monumentation; also assisted in typography and monumentation. I supervised the installation of

roads, road toppings, highway construction work.

Q What was your next job and when?

A After the Town of Brookhaven, I went to work for O'Healey Construction, once again as an engineer in a supervisory position.

I supervised carpentry, I supervised installation of our own concrete, supervised the installtion of tiles, supervised installation of the dewatering system, supervised the installtion of masonry walls.

Q How long did you work for that company?

A O'Healey Construction, approximately a year and a half, two years, I couldn't be sure.

Q When did you leave O'Healey Construction?

A Approximately a year and a half, two years after I started with them.

Q What hyear?

A To the best of my recollection, I'd say somewheres around '68. I couldn't be sure.

If you are going to nitpick about things, I tell you right now I couldn't relate to it.

Q Did I ask you a date or did I ask you a year?

A You asked me a year.

Q And you said 1968, correct?

A Could be. I know I said that, yes.

Q Who did you work for after that?

A Double M construction Corporation.

Q In what capacity?

A Once again, superintendent.

Q Of what?

A Of a highschool.

Q Building what?

A Supervised the installation of kilt-up wall construction, supervised pouring of our own concrete with our own work forces: carpenters, laborers. Coordinated all shop drawings, architectural structural drawings.

Q How long did you work --

A Supervised --

Q Go ahead.

A Supervised the installation of all structural steel; made changes on the job in relation with the architect and structural engineers. Worked for Double M Construction approximately a year and a half, two years once again.

Q When did you leave Double M Construction?

A Approximately a year and a half, two years after I started with them. What year?

Q Year.

A I worked for the prior corporation in 1968 and then two years from then would be 1970, I would imagine.

Q Who did you go to work for after Double M?

A Double M construction -- it could have been Edward Epstein Construction. I was only with him for I think two weeks. The job he had planned didn't come through.

After him I believe it was Francisco and Jacobus.

Q And what position did you hold with Franciso and Jacobus?

A Title-wise it would be project coordinator. Once again supervising --

Q Were you a clerk?

A No.

Q What did you do?

A SUpervised and checked all shop drawings, architectural and structural drawings, made changes with the engineers in the field, checked out the various trades in respect to the installation of their material, carpentry, masons; made sure they used the right kind of blocks, it was in the right location; made sure the sprinkler contractor installed the right type of siamese connections, single connections; made sure the right material was being used as was called for in the specifications.

Q Did you need the specifications to do this?

A To do what, sir?

Q What you just said.

MR. RITCHIE: Your Honor, I object onthe grounds of relevance.

THE COURT: We are getting terribly far afield.

MR. GILLEN: Two more questions, your Honor, I think we are up to the present time.

Q Any other jobs between that and HarMac?

A No.

Q Did you have the specifications forthe building going up on Nesconset Highway?

A At this time I couldn't be sure. I would most likely say no, I don't believe I've ever seen them.

Q Could you tell us, please, how you building without specifications?

A Very easily, you go to the drawings. You go to your structural drawings to start your concrete foundations.

You go to your structural drawings for the installation of your reinforcing steel; you go to your structural drawings for the installtion of the structural steel; you go to your structural drawings for the elevation.

Specifications don't say elevations. You go to your architectural drawings for 90% of your dimensions. You go to your architectural for the type of material to be installed, whether it's carpentry, masonry, stell or whatever.

Q What about concrete?

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A What about it?

Q Do you need specifications for concrete?

A Not necessarily, no.

Q Don't you need the mixture?

A Nine times out of ten --

Q -- for the type of for the type of job youre doing.

A I beg your pardon?

Q Don't you need the mixture?

A Yes.

Q Where do you get the mixture from --

A From the --

MR. RITCHIE: I must object on the grounds of relevance.

THE COURT: He may inquire.

A Either in the specifications or on the structural drawings.

Q Were the --

A At the start of a construction job, the specifications are delivered to the concrete supplier.

Q How many jobs have you had where you worked without the specifications, Mr. Taibbi?

A To the best of my recollection, I would say that one.

Q Which one?

A HarMac.

Q So in your ten years of experience, every other job you always had the specifications, right?

A Yes, I venture to say so.

Q But you didn't have them on this job, is that right?

A They weren't relevant. No, I didn't have them.

Q Whenyou put up a steel support, isn't it a fact that you need the specifications for that steel support in order to make sure it can support the load that's going to be on it?

A No.

MR. RITCHIE: Objection, your Honor, on the grounds of relevance.

THE COURT: If he has already explained his view of these matters and said that on this job he did not need them, that he worked from the structural drawings.

Q Mr. Taibbi, you saw Harry Goberman some time after June 28th, isn't that correct?

A Yes.

Q Did he have any marks on him?

A I beg your pardon?

Q Did he have any marks on his person?

A Yes he did.

Q Did he have any marks on his face?

A To the best of my recollection, yes, he did.

Q What kind of marks did he have on his face?

A Bruises.

Q Where were the bruises on his face?

A I believe they were on his cheeks and on his forehead.

Q Noticeable?

A To me they were, yes.

Q Black and blue?

A I would say so.

Q Would you describe for the Jury, please, the area on his cheeks where he had these black and blue marks?

A To the best of my recollection now I would say he had them on this part of the cheeks and on his forehead (indicating).

GR fls

(Continued on next page.)

CROSS-EXAMINATION

6pm DeLiso

BY MR. GILLEN: (Cont.)

Q What about his nose?

A I don't recall.

Q Well, haven't you indicated almost his whole facial area, on the cheeks and the forehead?

A No, sir. Cheekbone area, forehead area. When I say forehead area, I don't mean that whole complete forehead.

Q When was this that you saw Harry Goberman?

A It would be on July 7, I believe.

Q You told us you met --I'll withdraw that. You said there was a time when John McNamara was on the job site and had a conversation with you. I believe you said it was June 9, 1972, about a level or transit?

A I don't know if that was the day. I know --

Q Would you check your ntoes, please? Didn't you --

THE COURT: Isn't this the one he checked from his notes?

MR. GILLEN: Yes.

THE COURT: Let's not go through that again.

Q What time of the day was this?

MR. RITCHIE: Your Honor, could counsel stand

back at the podium?

MR. GILLEN: All rightL

A As to the time of the day, now, in 1974, I would -- I believe it was in the afternoon.

Q How long was John McNamara on that job site on the afternoon of June 9, 1972?

A I have no way of knowing.

Q Well, your best recollection, was it more than an hour?

A I know that he was in my presence for less than a half an hour.

Q About a half an hour then?

A I said less than half an hour.

Q This is the afternoon of June 9th; is that right?

A If that was the date that I mentioned before, yes.

Q Well, will you look at your record and tell us where that note appears on the record, at what portion does it -- the note appear for that date?

A Did you say June 9th? It wasn't June 9th, I don't believe.

Q Will you check?

THE COURT: Yes, it was.

MR. GILLEN: Yes.

MR. RITCHIE: Your Honor, if I may, it was separately marked, separately marked.

THE COURT: It's what?

MR. RITCHIE: Your Honor, that had been -- that had been separately marked.

THE COURT: Then maybe it wasn't returned to him.

THE WITNESS: I don't think it was, your Honor, I don't see it here.

MR. GILLEN: Pernaps, your Honor, we have a photostat.

THE COURT: That's Exhibit 19 for identification.

MR. RITCHIE: YEs, your Honor.

THE WITNESS: Here it is. June 9th.

BY MR. GILLEN:

Q Isn't it a fact --

THE COURT: Whereabouts on your entries for that day was the entry representing this meeting with John McNamara?

A On --

THE COURT: Occur.

A On the back of the daily report, note No. 3.

Q Is that the last entry made for that day?

A Yes, it is.

Q Would that refresh your recollection as to what time of day it was made?

A Not necessarily, no.

Q Are these contemporaneous notes, Mr. Taibbi?

A Timewise?

THE COURT: No. When did you write the notes up?

THE WITNESS: During the course of the workday.

MR. GILLEN: Excuse me one moment, your Honor.

THE COURT: Surely.

Q Now, was it your custom to put thing into your notes as they occurred during the day?

A Not necessarily, no.

Q When did you make up these notes, Mr. Taibbi?

A Whenever I had ample time. If I was pouring concrete in the morning I wouldn't necessarily indicate it at that time. On my -- I might do it at 3:30 in the afternoon.

Q Would you then write in your diary, log, the chronological order of events that had transpired that day?

A Not necessarily, no.

Q Now, referring you now to the incident where you say that Thomas McNamara told Harry Goberman he had a

contract, you don't recall the exact date, correct?

A No.

Q Did Mr. McNamara on that day say to Harry Goberman,"If anything happens to me, or if anything should happen to me, whether I get hit by a car or what, I got a contract out on you"?

A I would say yes, he did. Or words to that effect.

Q And you described Mr. McNamara as being practically incoherent; is that correct?

A That is correct.

Q And how many people were around when he made this alleged threat?

A Myself, John McNamara, Harry and an electrical foreman. Merkel's foreman.

Q This was not made in a secret place; is that correct?

A No.

Q There were other men on the job in and about the area?

A Yes.

Q Now, you told us that you were doing some sweeping and scraping of floors; is that right?

A Yes.

Q How many days did you scrape floors and were you sweeping?

A I couldn't give you the number.

Q To your best recollection?

A Possibly five.

Q And were you supervising anyone on that date other than yourself?

MR. RITCHIE: Objection, unless we fix that date.

THE COURT: I think he is talking about the period from the shut down of the work on the 20th of June to whenever it was he went off the job; is that right?

MR. GILLEN: That is correct, your Honor.

THE COURT: Is that what you understood, Mr. Taibbi?

THE WITNESS: Yes.

THE COURT: Yes.

Q Now, you were in Mr. Goberman's employ up to what date?

A Somewheres around July 4, July 7, something like that.

Q Were you doing work as a construction superintendent from the day the job was closed down, up until

July 4 or July 7?

A I'd say yes.

Q Tell the jury what type of construction superintendent work you were doing.

MR. RITCHIE: Objection.

THE WITNESS: I beg your pardon.

MR. RITCHIE: I --

Q What type of construction superintending work you were doing.

A Just by being there.

Q Being where? Were you on the job site?

A On the job site.

Q Excuse me?

A On the job site, around the job site, anything relating to the job, I was considered on the payroll.

Q What type of supervision were you doing, if any?

A Supervision per se, I'd probably say none. No supervision.

Q As a matter of fact --

A Other than supervising myself.

Q Just yourself. Were you doing some detective work for Mr. Goberman at that time?

A No, sir.

Q Were driving by the job site, looking to see who was there?

A Yes.

Q Were you parking around the job site, on the road, looking to see what was going on?

A Yes.

Q You weren't on the job site itself, isn't that correct, during this period of time?

A That would be a correct assumption, yes.

Q How long did you do this work?

A Approximately six, seven working days, approximately.

Q How many working days did you actually work for Harry Goberman between May 24 or 25, as you've described it, up until July 7?

A From May 25 'til -- 'til the job was shut down and then add five more working days, I'd say.

Q And then --

A Brought us into the end of -- beginning of June, somewhere around there.

Q Then in July, you were just observing, correct?

A Right.

Q Were you reporting to Harry Goberman?

A Not to him directly. Only entering it in my

daily reports.

Q Incidentally, I show you Defendant Exhibit D for identification.

Is this the notice that was posted on that job site?

A I honestly couldn't tell you.

Q Have you ever seen a posting on a job site before?

A Have I ever what?

Q Ever seen a posting on a job site?

A A posting? Yes, I've seen postings.

Q Did there come a time when you were informed not to continue with construction or to use those premises?

THE COURT: May I see that?

MR. GILLEN: YEs, sir.

THE WITNESS: I might nave been. I don't recall.

Q You don't recall?

A No, sir.

Q You've been a construction superintendent for ten years. You've worked on many jobs.

A Yes.

Q You've told us. Have you ever had a job posted before?

A No. Never.

Q Never. So this is the first and only time you've ever had a job posted? Isn't that right?

A That's correct.

Q But you can't remember whether or not you were informed by authorities not to construct or to use those premises, is that your testimony, sir?

A That is correct. No authority ever told me not to work on that job.

Q Did they actually put up signs?

A I know that there was a poster put up, yes.

Q Was it a poster similar to --

A I couldn't tell you at this time.

Q Did it look like this?

A It was black and white, yes.

MR. RITCHIE: Your Honor, I object. This document has never been marked in evidence. It's --

MR. GILLEN: It's marked for identification. I'm not using it as evidence.

As a matter of fact, I had it folded.

MR. RITCHIE: Not when you were showing it to Mr. Taibbi.

MR. GILLEN: No. I don't think I'd have it folded showing it to Mr. Taibbi and get a responsive

11 Taibbi - cross/Gillen

answer. I'm sorry, sir.

BY MR. GILLEN:

Q Now, did you make a note in your construction log of the job being posted?

A Yes, I believe I did.

Q Could you show us that note?

THE COURT: Would you direct his attention to a day, if it's in there.

MR. GILLEN: I believe it's the --

MR. RITCHIE: Your Honor, can counsel step back to the podium?

MR. GILLEN: The 20th.

THE WITNESS: The 20th.

Q I think so, Mr. Taibbi.

MR. GILLEN: I'm sorry, your Honor, I'm trying to speed it up.

A Yes, sir.

Q Is it the 20th, Mr. Taibbi?

A Yes, it is.

Q All right.

And may I see the note, please?

A Yes.

Q As a matter of fact, does that refresh your recollection as to whether or not some authority from the

town told you that the job was posted and to stop construction?

A All this would indicate to me is town building department representative issued a stop order on further construction.

Q But he notified you of it because it appears in your log; isn't that correct?

A Yes, that's true.

Q So my question is: Does it refresh your recollection that some authority told you to stop constructing on that building?

A I would say yes.

MR. GILLEN: Is this a convenient time, your Honor?

It's 4:30.

THE COURT: Yes, it is a necessary time.

MR. GILLEN: Yes.

THE COURT: We will recess now until Tuesday morning at 10:00 o'clock. Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

(The following occurred in the absence of the jury.)

THE COURT: All right, gentlemen.

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 73-CR-442

JOHN DE LISO, THOMAS MC NAMARA, ALPHONSE MEROLLA and ALPHONSE M. MEROLLA, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

October 15, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JOHN F. DOOLING, JR., U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: DAVID RITCHIE, ESQ.
-and-
MARSHA KATZ, ESQ.
Special Attorneys, Task Force

RONALD FISCHETTI ,ESQ.
Attorney for Defendant DeLiso

LEONARD J. MEISELMAN, ESQ.
-and-
MICHAEL GILLEN, ESQ.
Attorneys for Defendant Thomas McNamara

MS. MARION SELTZER
LEGAL AID SOCIETY
Attorney for Defendant A.M. Merolla

JOHN LEONE, ESQ.
Attorney for Defendant A. Merolla

Also present:

RICHARD MC MULLEN,
Special Agent, Federal Bureau of Investigation

(The jury took its place in the jury box at 10:10 o'clock a.m.)

EK:jm
TlamR1

MR. GILLEN: May I proceed, sir?

THE COURT: Yes, sir.

G A R Y T A I B B I , called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

CROSS-EXAMINATION

BY MR. GILLEN (continued):

Q Mr. Taibbi, do you belong to any union?

A Yes.

Q Which union?

A Operating Engineers.

Q And the Operating Engineers, is that who operates trains and things of that nature?

A I belong to a local.

Q Which local?

A 15D.

Q Is that which operates trains and bulldozers and things of that nature?

A No.

Q What is that?

A Surveyors.

Q Surveyors.

Now, Mr. Taibbi, on June 5th, if you recall, you told us that you called Mr. Goberman; is that correct?

A Yes, sir.

Q Did you tell him to come to the site armed?

A I believe I used those words, yes, sir.

Q Do you know if he had a gun?

A No, I don't.

Q What did you mean by "armed"?

A To be prepared for trouble, I didn't necessarily mean it to be a weapon, it could have been anything.

Q Could it have been a throw pillow?

MR. RITCHIE: Objection.

THE COURT: A what?

MR. GILLEN: He said it could have been anything, I asked him if it was a throw pillow.

THE WITNESS: It could have been, but I doubt it.

MR. GILLEN: I see.

Q Did you know Harry Goberman to possess guns?

A No, sir.

Q But you used the word "armed," right?

A That is correct.

Q Now, you told us you were in fear of your life; is that correct?

A I beg your pardon?

Q Did you tell us that you were in fear of your life?

A Yes.

Q As a matter of fact, didn't you stay on that job alone for many days?

A Yes.

Q How many days?

A I don't know, it could have been ten working days.

Q And were you in fear of your life during these ten working days?

A No, not necessarily.

Q Did you ever call the police?

A No, sir.

Q I think you told us you were told you could call the police if you wanted to; is that right?

A That is correct.

Q Now, did you remove anything from the job site towards the latter part of June?

A I could have, I know I did remove certain materials to bring into the main office.

Q On whose orders did you remove materials?

A Harry's.

Q What date was it that you removed the materials?

A I don't know, that would be in my daily reports.

Taibbi-cross/Gillen

Q Have you your daily reports here to refresh your recollection?

A They should be, yes.

(Mr. Ritchie handed documents to Mr. Gillen.)

MR. GILLEN: Thank you.

Q I show you what has been marked as 3500-- just 3500 --

THE CLERK: It has to be something else.

3500-17.

BY MR. GILLEN:

Q 3500-17, and tell us please is there anything in there which would refresh your recollection as to whether or not you removed anything from the job site and when that would have been, if it occurred?

(The witness then examined the exhibit.)

A Yes, sir, on June 26th.

Q What did you remove, sir, on June 26th?

A According to my records, the construction trailer file cabinet and the remainder of the company tools from the job site at Harry Goberman's orders and delivering items to Len-Al's office at 394 Hoffman Lane, Hauppauge.

Q Did you make out this page on June 26th?

A To the best of my recollection now, yes, I did.

Q Did you remove anything on June 27th?

Taibbi-cross/Gillen

A According to my records, it doesn't indicate so.

Q Well, you are testifying from those records; isn't that correct?

A That is correct.

Q Now, other than the records, do you have any independent recollection as to whether or not you removed anything on June 27th?

A No, I don't.

Q Other than the records, do you have any independent recollection as to whether or not you removed anything on June 26th?

A Other than the records, no, sir.

Q And these records are contemporaneously kept, you made them at the time; is that correct?

A Yes, sir.

Q Now, did you tell the FBI when you took the job as construction superintendent that the building was about 48 per cent complete?

A That sounds correct, yes.

Q Well, do you recall using the percentage, 48 per cent complete?

A It sounds familiar.

Q Well, I show you 3500-7 and if you look at this, please, and in the second -- the third paragraph, will you look at that, please, and tell us if that refreshes your

recollection?

A Yes, sir, it does.

Q So you did tell them 48 per cent complete; is that right?

A Yes, sir.

Q You made that exact estimate, Mr. Taibbi?

A I wouldn't call it an exact estimate, I would call it my estimate.

(continued on next page)

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T1/R2



Q You didn't say half complete; right?

A No, sir.

Q Now, how much was your salary as a construction superintendent on this job at HarMac?

A To the best of my recollection somewhere around $350 a week.

Q Well, do you have a present recollection as to what it was?

A I beg your pardon?

Q Do you have a present recollection as to what your salary was?

A Well --

MR. RITCHIE: Objection, your Honor, he already stated he did.

MR. GILLEN: He said "around" your Honor.

THE COURT: He said about that.

MR. GILLEN: All right.

Q My question, sir, is do you have a present recollection?

THE COURT: He said that it is about that, you asked what he recalls.

Now next question.

MR. GILLEN: Page 1189, Mr. Taibbi -- Mr. Ritchie.

MR. RITCHIE: Of January?

MR. GILLEN: Of January of '74.

Q Were you asked these questions and did you give these answers --

MR. GILLEN: Line 17, do you have it Mr. Ritchie?

MR. RITCHIE: Yes.

Q Line 17.

"Question: By the way, Mr. Taibbi, how much were you paid to act as construction superintendent?

"Answer: I don't -- weekly, hourly, what are you talking about?

"Question: Weekly, how were you paid, by the hour or weekly?

"Ansser: Weekly.

"Question: And how much did you get per week?

"Answer: $350."

Does that refresh your recollection -- well, first, were you asked those questions and did you give those answers?

A I would have imagined so.

MR. GILLEN: Am I reading correctly from the record, Mr. Ritchie?

MR. RITCHIE: Yes, he was, your Honor.

A Then I must have answered and gave you those answers.

Q I am asking you now does that refresh your recollection as to what your salary was as construction superintendent?

A To the best of my recollection at this date it was around $350 a week.

MR. GILLEN: Excuse me one moment, your Honor.

THE COURT: Certainly.

MR. GILLEN: I have nothing further your Honor.

THE COURT: Very well.

MR. FISCHETTI: I have no questions, sir.

MR. LEONE: No questions.

THE COURT: Ms. Seltzer.

MS. SELTZER: No questions, your Honor.

THE COURT: You are excused, Mr. Taibbi -- I am sorry, Mr. Ritchie.

MR. RITCHIE: Yes, your Honor?

REDIRECT EXAMINATION

BY MR. RITCHIE:

Q Now, when you said 48 per cent complete, is that a rough estimate that it was a little less than half complete?

A Yes, sir.

MR. RITCHIE: I have no further questions at this time.

RECROSS-EXAMINATION

BY MR. GILLEN:

Q Do you consider 48 per cent a rough estimate in your professional judgement?

A I consider it an approximate estimate.

Q I see.

MR. GILLEN: Thank you, nothing further.

MR. RITCHIE: Do you want to step down?

THE COURT: You are excused, Mr. Taibbi.

(The witness was excused.)

MR. RITCHIE: Your Honor, the Government's next witness is parking his car. I don't know if he here yet.

Your Honor, my witness was here and he had trouble parking his car and I told him that I didn't expect to use him until at least 10:30, and I --

THE COURT: What are you requesting now? Do you have some other person in place of him or what?

MR. RITCHIE: He should be up in my office by how, your Honor.

THE COURT: All right then, we will have a

short recess.

MR. RITCHIE: Thank you, your Honor.

THE COURT: You will let us know as soon as he gets here?

MR. RITCHIE: Yes, sir, I should have him in a couple of minutes.

THE COURT: Members of the jury, please don't discuss the case with one another or with anyone not on the jury until it is given to you to decide.

(At 10:25 a.m. the jury having been excused, left the court room.)

(Cont'd on next page.)

MP:jm
T2amR1

(The following took place outside the presence of the jury.)

MR. RITCHIE: Your Honor, we have never put on the record certain 3500 material.

THE COURT: Go ahead.

MR. RITCHIE: 3500-10 was a two-page 302 regarding Mr. Alan Ginazdowski dated last week.

3500-11 was a one-page 302 dated 8/23/73 with respect to Mr. Taibbi.

3500-12 was a one-page 302 dated September 19, 1972 with respect to Mr. Taibbi.

3500-13 was a one-page 302 dated September 22nd, 1972, with respect to Mr. Taibbi.

3500-14 was a two-page report of interview dated December 21, 1972, with regard to Mr. Taibbi.

3500-15, Grand Jury minutes dated November 1st, 1972 with respect to Mr. Taibbi.

3500-16 was a two-page -- I'm sorry, a three-page report of interview dated September 6, 1972, with respect to Mr. Taibbi.

3500-17 is the daily reports of Mr. Taibbi.

I would ask a two-page 302 dated September 28, 1972, which was marked in the prior trial as 3500-14 be marked as 3500-18. That is with respect to Mr. Edward Tew.

THE CLERK: So marked.

MR. RITCHIE: I would ask that a one-page report of interview dated September 25, 1972, with respect to Dr. Biagio Punturo -- I'm sorry.

(Pause.)

MR. RITCHIE: As 3500-19, your Honor, a three-page report of interview dated February 21, 1973 with respect to John Erlich.

THE CLERK: So marked.

MR. RITCHIE: That was previously marked as 3500-18 in the prior trial, your Honor.

As 3500-20, a two-page report of the Suffolk County District Attorney's Office with respect to Erlich. A report prepared by him.

THE CLERK: 3500-20.

MR. RITCHIE: That was previously marked as 3500-17 in the prior trial, your Honor.

THE CLERK: This is yours, Mr. Ritchie.

MR. RITCHIE: Thank you.

And, as 3500-21, a one-page document of interview dated September 25, 1972, with respect to Dr. Biagio Punturo. That was previously marked as 3500-11.

THE CLERK: Now 3500-21.

MR. RITCHIE: As 3500-22, a two-page report of

interview dated October 13, 1972. That is with respect to Mr. Alan Goberman. That was previously marked as 3500-10.

THE CLERK: Now 3500-22.

MR. RITCHIE: And, a one-page report of interview as 3500-23. It is dated August 24, 1973. It is with regard to Alan Goberman.

THE CLERK: So marked 3500-23.

MR. RITCHIE: Grand Jury minutes dated November 8, 1972, with respect to the witness Alan Goberman, your Honor. These were previously marked 3500-8.

THE CLERK: Now 3500-24.

MR. RITCHIE: Your Honor, with respect to the photographs concerning Alphonse Merolla, the Government didn't ask Mr. Taibbi to make any identification. I made an effort this morning to find those photographs. I had seen them in my office last week. I looked through all the file folders in this case and could not find them.

However, we have the negatives from which those photographs were printed and they are going to be made up in the FBI laboratory at the present time.

THE COURT: They're going to make fresh prints from the same negatives?

MR. RITCHIE: Yes.

The Government has Mr. Edward Tew.

THE COURT: T-e-w?

MR. RITCHIE: Yes.

After Mr. Tew testifies, the Government has Mr. Harold Goberman available. There were some questions left undecided at the time of his testimony. There was a subpoena issued, if your Honor will recall, and Mr. Meiselman I believe has some further questioning to that. In the material subpoenaed regarding the job, I ask before he testifies, an offer of proof could be made. I have no objection to it being outside of Mr. Goberman's presence so that we can decide on the relevancy of it or have argument on the relevancy of it.

I am making the material available to Mr. Meiselman.

THE COURT: Which material?

MR. RITCHIE: Subpoenaed, as per agreement. It was kept by myself. Mr. Meiselman had an opportunity to look at it. I had Xeroxed part of the material that he requested to be Xeroxed. A large batch of checks has not been Xeroxed yet.

Mr. Meiselman asked me to have it marked as an exhibit for identification. I will do that now.

MR. MEISELMAN: May I suggest all of the material that Mr. Goberman produced here be marked as one exhibit

for identification.

MR. RITCHIE: Your Honor, the balance of the material -- material already Xeroxed was in my office and Mr. Meiselman requested it be brought to court and my secretary is bringing it to court now.

I'm sorry, we have it.

THE CLERK: Marked for identification as Government's Exhibit 20.

MR. RITCHIE: This is previously marked -- I am not quite certain in what proceeding, Defendant's Exhibit AL.

MR. MEISELMAN: I wasn't here. It should be marked in this proceeding though.

THE COURT: No, AL for identification is Harold Goberman's file at this trial.

MR. RITCHIE: There are a number of Xeroxes in here. The Xeroxed material he requested. That is the only difference between this originally and this now.

I will get Mr. Tew.

(The jury is in the jury box.)

MR. RITCHIE: The Government would call Mr. Edward Tew as its next witness.

THE CLERK: Yes, sir. If you will walk up here, please.

(continued on next page)

E D W A R D T E W , called as a witness on behalf of the United States of America, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. RITCHIE:

Q Mr. Tew, what is your occupation?

A Excavating contractor.

Q Are you self-employed or do you work for someone else?

A Self-employed.

Q What is the name of the firm?

A Two, that's T-w-o Brothers.

Q And your name is Tew?

A T-e-w.

Q Are you married?

A Yes.

Q Where do you live?

A East Patchogue.

Q In your business as an excavating contractor, do you have occasion to use heavy equipment?

A Yes.

Q What type of equipment?

A Bulldozer equipment, anything for excavating.

Q Do you perform your own work?

A Yes, sir.

Q Do you own your own equipment?

A Yes.

Q Do you ever on occasion rent out that equipment?

A Yes, sir.

Q Do you know an individual by the name of Harold Goberman?

A Yes.

Q Where do you know Mr. Goberman from?

A He hired my equipment.

Q During the course of the year 1972, did you ever have occasion to rent out equipment to Mr. Goberman?

A Yes.

Q Now, do you recall what job you rented out equipment to Mr. Goberman for?

A One particular one was McNamara Buick in Port Jefferson.

Q Besides that, had you rented equipment to him on other occasions?

A Yes.

Q Approximately how many occasions?

A How many occasions?

Q Yes.

A Twice, besides that.

Tew-direct/Ritchie

Q Now, do you know where the McNamara Buick job was located?

A Yes.

Q Where?

A Nesconset Highway in Port Jefferson.

Q Did you yourself ever have occasion to work on that job site?

A (No response.)

Q Did you at any time have occasion to do actual work on the job site, besides renting equipment out?

A I myself?

Q Yes.

A No.

Q Did any employee of your firm?

A Yes.

Q Now, do you know whether that job site is now an operable showroom?

MR. MEISELMAN: Objection, your Honor.

THE COURT: Overruled.

That means you can answer the question if you know of your own knowledge and observations.

MR. RITCHIE: Yes, from his own knowledge and observations.

BY MR. RITCHIE:

Q If you know?

A If it is open for business you mean?

Q Yes.

A Yes, it is.

Q Now, with respect to that job site, what type of equipment did you rent to Howard Goberman?

A A bulldozer.

Q Do you know what the bulldozer was used for?

A Yes, grading. Spreading dirt.

Q Did you rent equipment to him on that job site on one occasion or more than one occasion?

A It was one occasions, but more than one day.

Q Do you recall how many days?

A Not offhand, I don't.

Q After renting the equipment, did you ever try to collect the rental from Mr.Goberman?

A Yes, sir.

Q What, if anything, happened at the time you attempted to collect the money from Mr. Goberman?

MR. MEISELMAN: I object to the form of the question.

THE COURT: The form of it, Mr. Meiselman?

MR. MEISELMAN: The form and content. "What, if anything, happened when you tried to collect," gives the witness leeway to say most anything.

THE COURT: He obviously is making an effort not to lead. You may answer the question.

THE WITNESS: When I tried to collect from him, I found out at that time I wasn't working for who I thought.

THE COURT: No. Did he say something to you, or how did you find it out?

THE WITNESS: That I wasn't working --

THE COURT: What exactly happened? Would you tell us? Don't just give us your conclusions, but what happened when you went to collect.

THE WITNESS: What actually happened, your Honor, was I called his office first and was told then that I wasn't working for him and his brother. It was now just him. I had been, prior to this, been calling his office and sending my bills to his office. When I didn't receive payment I was told by his brother's wife that I wasn't working for him, I was working for Harry Goberman who went out on his own, but I wasn't aware of it at that time.

BY MR. RITCHIE:

Q Who did you previously -- I'm sorry, withdrawn.

Before you spoke with Harry Goberman's sister-in-law, who did you believe you were working for?

A It doesn't come clear to my mind, the name of the company, but the company was him and his brother.

Q Does Len-Al sound familiar to you?

A Yes.

(continued on next page)

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DIRECT EXAMINATION

BY M R. RITCHIE: (Cont.)

Q Who did you learn that you were in fact working for?

A That I wasn't in fact working for them at this time?

Q Well, after learning that, did you learn who you were in fact working for?

A Yes.

Q Who was that?

A Harry Goberman himself.

Q Now, did you ever have occasion to speak with Harry Goberman in an attempt to collect your money?

A Yes.

Q What if anything happened at that time when you spoke to Mr. Goberman -- Harry Goberman?

A He said that he hadn't been paid.

Q What if anything did he tell you to do?

A He told me to go to Mr. McNamara.

Q As a result of that conversation, what did you then do?

A Mr. McNamara? The question with Mr. McNamara, are you referring to it?

Q No, did you go to speak with Mr. McNamara?

A Yes, I did.

I went to Mr. McNamara.

Q On approximately how many occasions?

A I'd say two, three -- two or three.

Q What if anything happened on the first occasion?

A First I understood from Mr. McNamara he had paid Harry Goberman.

Q What did Mr. McNamara say to you and what did you say to him?

A I asked -- I had explained to him what I had done on the building. He was aware of that, because I know him. I told him that I went to Mr. Goberman to collect and Mr. Goberman said he hadn't been paid. Mr. McNamara said yes he was paid and this went on back and forth, back and forth. That's how it came about.

Q Do you see that individual present in this Courtroom?

A Mr. McNamara?

Q Mr. McNamara.

A Yes, I do.

Q Could you point him out --

MR. MEISELMAN: Identification is conceded, your Honor.

THE COURT: Very well.

Q Now, on the last occasion that you had occasion to speak with Mr. McNamara, what if anything happened then?

A I told Mr. McNAmara that my type of business -- that in my type of business I have a certain period of time from the time I do my work to put on a lien on a job, referred to as a mechanic's lien, and after that period of time, you know, I can do this and you get the money one way or another.

I explained this to Mr. McNamara that being I hadn't been paid, I would have to put a mechanic's lien on the job and he got very excited then and went into a rampage and started yelling and hollering about Harry Goberman and he made a statement to me that if anything -- "I had a heart attack once and if anything happens to me or my family or my building from this man, I have a safety deposit box with $10,000 in it, I have a contract on his head, not on his body. We'll bring back his head to look at the building one last time."

He said, "You can go back and tell Harry Goberman."

I went back and told him "This is the last time I am speaking to you. This is the last time I'm speaking to Mr. McNamara. I put a lien on the job. I will give you a message from him," and I told it to Harry Goberman.

He said, "Don't worry about it" and hung up.

Q On the last occasion that you spoke to Mr. McNamara, did he say anything about having paid Harry Goberman?

A No, sir.

I believe I spoke to Mr. McNamara last. I don't actually recall it word for word. He said, in effect, I can pay you but if I do I will let him off the hook or something to that effect.

Q Did hesay whether he had in fact paid Mr. Goberman?

A No, sir.

At that last time, I don't believe he did state whether he paid him or not -- the last time.

Q Was there any mention made of a bumper of a car?

A Yes, what I just said -- when he said about the contract on his head, he said "If I have to, I will tie his head to a bumper and bring him back to this place and let him take a good last look at it."

Q In your industry, how long a period of time do you have to wait to file a mechanic's lien?

A I'm not sure of it, but I think it is 90 days.

Q That is your understanding -- the understanding that you had at the time you spoke to Mr. McNamara; is that correct?

A To be honest with you, I don't really know. I called my attorney and I explained it to him. He mentioned to me the amount of days and I put it in his hands. As far as I know at this time I have a lien on the building.

Q When you told Mr. McNamara about placing a lien on the building, what if anything did he say to you about that lien?

A He said something in effect, "If that's what you have to do, do it. It's a matter of having it lay there," or something to that effect.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. RITCHIE: (Cont.)

Q Do you recall precisely what he did say on that occasion?

A Exactly what he did say?

Q What in full detail he said on that occasion.

A No, sir, but the way I took it --I can't say he said it --

Q We are not concerned with the way you took something, because -- I wouldn't know why.

Have you testified previously in this matter?

A Yes, sir.

Q At the time that you testified --

MR. MEISELMAN: Objection, your Honor.

Q --was your recollection better than it is now?

A What was that?

THE COURT: Overruled.

Q You testified back in January; is that correct?

A Yes.

Q When you testified was your recollection then better than it is now?

A Yes, sir, a lot better -- 100 percent better.

Q I show you your prior testimony, 1357: I'd ask you to read lines 5 through 11.

A Out loud?

Q No, to yourself, please.

A Yes, sir.

Q Does that refresh your recollection as to --

THE COURT: I am sorry.

MR. MEISELMAN: Your Honor, I believe this testimony is completely irrelevant to the issues in this matter.

MR. RITCHIE: I will show it to your Honor.

(Document handed to the Court.)

THE COURT: He may be questioned to the basis of refreshing his recollection from that material.

The objection is overruled.

BY MR. RITCHIE:

Q After reading this, is your recollection refreshed as to what was said about the lien?

A YEs, sir.

Q What did Mr. McNamara say about the lien that you were going to place on his property?

A He said, "If you do have to place a lien, do whatever you have to do, it's -- the building is going to be in the family name for years and years,"or something to that effect.

MR. RITCHIE: I have no further questions of

this witness.

CROSS-EXAMINATION

xxxx BY MR. MEISELMAN:

MR. MEISELMAN: I trust your Honor will forgive me. I have wrenched my back over the weekend. I will have to crawl a little bit.

Q Mr. Tew, after you stopped doing work for Harry Goberman, did there come a time when you started working for Mr. McNamara?

A Yes, sir.

Q And what work did you do for Mr. McNamara, on this job site?

A The same work basically I had been doing prior to that, grading, finishing off, so he could complete.

Q After you did your work did you bill Mr. McNamara?

A Yes, sir.

Q Were you paid?

A Yes, sir, immediately.

Q When you started working on this job, you were working for Len-Al Construction, I believe; is that correct?

A No, sir, I thought I was.

Q As a matter of fact, Mr. Tew, you sent the bills for this work to Len-Al Construction?

4 Tew- cross/Meiselman

A Yes, sir, I did.

Q It was then after that you sent the bills to Len-Al that you weren't paid,that you were told that it was Harry that was hiring you?

A Yes.

Q Is that right?

A Yes, sir.

Q Now, did anyone in Len-Al tell you that Mr. McNamara was a conscientious man and that if the bills were to be paid, he would pay them?

MR. RITCHIE: Objection, your Honor.

THE COURT: Overruled.

A Sir, could you repeat that again?

Q Did anyone from Len-Al tell you, sir, that Mr. McNamara was a conscientious man and that if the bill had to be paid, they were sure that they would pay it?

A Yes, I believe that was stated to me by Harry Goberman's sister-in-law.

Q And also by Alan Goberman?

A I am not sure of him, sir.

MR. MEISELMAN: May I have this marked.

THE CLERK: Marked for identification as Defendant McNamara's Exhibit AO .

(So marked.)

BY MR. MEISELMAN:

Q Mr. Tew, I show you Defendant's Exhibit AO for identification.

Is that a letter addressed to you on the letterhead of Len-Al and signed by Alan Goberman?

(Shown to witness.)

A Yes, sir, it is.

Q I call your attention to the last part of that letter and I ask you if that refreshes your recollection as to the words I asked you on the previous question?

A Yes, sir.

Q What did Alan Goberman say to you in that letter --

MR. RITCHIE: Your Honor, I am not objecting--

Q -- with respect to Mr. McNamara being a conscientious man?

MR. RITCHIE: I must object to it, grounds of hearsay.

THE COURT: On what?

MR. RITCHIE: Your Honor, that would be hearsay.

THE COURT: No,it would not. Not in this context.

MR. RITCHIE: Yes, sir.

THE COURT: You may read it -- this is not

offered for the proof of the matter, for what was said by Mr. Goberman, if that is who signed the letter in writing to Mr. Tew.

THE WITNESS: Sir, I am confused. Are you saying did he say this to me?

BY MR. MEISELMAN:

Q Did you receive a letter?

A Yes, sir, I did.

Q In that letter what did Mr. Alan Goberman say to you concerning the fact that Mr.McNamara --

THE COURT: What did Alan Goberman write to you?

Q I beg your pardon -- write to you about Mr. McNamara being a conscientious man?

A He said that he's a very conscientious man and I am sure if he has any obligation to you--Harry has been thrown off the job -- I am sure Mr. McNamara will take care of it.

Q When is the date of that letter?

A July 6, 1972.

Q I believe that you testified that Mr. McNamara told you that with respect to you, sir, he had paid Mr. Goberman?

A Yes, sir.

Q Well, you were not paid?

A No, sir.

Q Would you expect, Mr. Tew, that Mr. McNamara pay something twice?

A No, sir.

Q Now, at the time Mr. McNamara appeared upset and told you these things that you were talking about, did he also tell you that he already had one heart attack?

A Yes, sir.

Q Did he also tell you that Harold Goberman had threatened him?

A Yes, sir, I believe he mentioned that.

Q Did he tell you what those threats consisted of?

A If he did, sir, I don't recall.

Q Did he tell you in words or substance that Harry Goberman had threatened to hit him over the head with a pipe?

A No, sir -- he did mention that he threatened him. I don't recall him mentioning --

Q Would it refresh your recollection that Mr. McNamara said to you that Harold Goberman had threatened to push him off the roof?

A Sir, to the best of my knowledge, I don't recall

that. I remember him saying that he was threatened, but I don't recall how he was threatened.

Q Would you say Mr. McNamara was frightened and upset when he was speaking to you?

A Definitely.

Q When he said that he had a contract for Harry Goberman, that was on condition that if anything happened to Mr. McNamara or his family from Mr. Goberman?

A Yes, sir.

Q Did Harry ever pay you, Mr. Tew?

A For that job, sir?

Q Yes.

A No ,sir.

Q Do you know whether or not Harry in fact had been paid the amount of money that was owing to you?

A No, sir, except that I was told by Mr. McNamara that he was.

Q One more thing, sir: Do you have any knowledge as to whether Len-Al Contractors or Construction has billed Mr. McNamara for the work you had done?

A No, sir, I don't have any knowledge as to how Mr. McNamara was billed.

Q Just one more:

Can you tell me, sir, when this conversation took

place approximately -- particularly if it was after June 28?

A Sir, I couldn't give you an answer on the dates. I really couldn't. I had been guessing.

Q Well, you were told by letter of July 6 from Len-Al that they were not responsible and that you were to go to Mr. McNamara or to Mr. Goberman; is that right?

A Right.

Q Would that refresh your recollection that you went to Mr. McNamara after July 6 of 1972?

A Yes, sir, I would assume -- I would assume that it was after that.

Q And that's when Len-Al or Alan Gob erman told you that Harry was already off the job; is that correct?

A Yes, sir.

MR. MEISELMAN: Thank you, I have no further questions.

MR. FISCHETTI: No questions.

MS. SELTZER: No questions, your Honor.

MR. LEONE: No questions.

MR. RITCHIE: Your Honor, I have some redirect.

REDIRECT EXAMINATION

BY MR. RITCHIE:

Q On cross-examination you were asked by Mr. Meiselman if Mr. McNamara appeard to be frightened and

upset at that time. Did you answer yes to that question?

A Yes, sir,he seemed upset and nervous, yes.

Q Did he appear to you to be frightened?

A No, sir, not frightened -- was like I said on a rampage, he was yelling and hollering.

Q He was angry and not frightened?

MR. MEISELMAN: I will object to that, your Honor.

THE COURT: Yes, the earlier answer must stand as the witness' testimony.

Q Can you explain what you mean, "on a rampage"?

A He was yelling very, very loud and his arms were waving and he was doing everything but standing still, he was running up and down and aggravated and screaming.

Q Do you know for certain that Mr. McNamara said he had been threatened?

A Yes, sir, he mentioned to me that Mr. Goberman had threatened him --

Q Did he say with what respect?

A Pardon me?

Q Did he say in what respect?

A No, sir. He said something in effect, "I am tired of his threats" -- something in that fashion.

Q Did eh say anything about Mr. Goberman's

threatening him with a contract?

MR. MEISELMAN: With a what?

MR. LEONE: What?

MR. RITCHIE: With a contract.

Q Did he say that Mr. Goberman had told him that he had a contract on his head?

A Did Mr. McNamara tell me?

Q Yes.

A That Goberman had a contract on his head?

Q Yes.

A No, sir.

Q The only person who used the word "contract" in the midst of a threat was Mr. McNamara?

MR. MEISELMAN: Objection.

THE COURT: Overruled.

A Yes, sir.

Q Now, after you went back to Mr. Goberman, did you tell him about -- did you tell him what Mr. McNamara told you to tell him?

A Yes, sir, it was over the phone.

Q Did Mr. Goberman tell you that he had been threatened by Mr. McNamara?

A Yes, sir.

Q With respect to payment, on this last occasion,

did Mr. McNamara tell you that he hadn't paid Harry Goberman?

MR. MEISELMAN: This is objectionable. It has been asked and answered.

THE COURT: It has been asked and answered. Continue.

(continued next page.)

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REDIRECT EXAMINATION

BY MR. RITCHIE: (Cont.)

Q Do you recall whether there was discussion about repayment on this last occasion?

MR. LEONE: Your Honor, I suggest that counsel adhere to your Honor's ruling.

THE COURT: The question has been asked and answered.

MR. RITCHIE: Yes, your Honor.

Q Do you know whether in fact Mr. McNamara had ever paid -- you testified on cross-examination -- I will withdraw that last question -- you testified on cross-examination that you had heard that Mr. McNamara had paid Mr. Goberman; is that correct?

A Yes, sir.

Q Did you ever hear Mr. McNamara had not paid Mr. Goberman?

A Yes, sir.

Q From whom?

A Harry Goberman.

Q Did you ever hear that from Mr. McNamara at any time, if you recall?

A That he had not --

MR. MEISELMAN: I'm going to object.

THE COURT: He may answer.

A That he had not paid him?

Q Yes, sir.

A Yes, sir, on the last occasion that is when he had mentioned to me like I stated before that he could pay me and that that would get him off the hook or something to that effect.

Q What did he tell you, can you tell us what he said on that occasion with respect to having paid Mr. Goberman or not?

A What did he tell me?

Q Yes, sir.

A I don't understand the question, sir.

Q Do you recall precisely what he did tell you with respect to whether he had paid Mr. Goberman or not on this last occasion?

A No, sir, not precisely, no.

Q Did you testify previously concerning this in January, 1974?

A Myself?

Q Yes, sir.

A Yes, sir.

Q Now I show you your prior testimony and I direct your attention --

MR. MEISELMAN: I'm going to object to refreshing his recollection, this witness' recollection --

THE COURT: The objection is overruled, of course.

Q I direct your attention to --

THE COURT: Page?

MR. RITCHIE: Page 1355 at line 16 through 21.

Q And I ask you to read that to yourself.

(The witness perused the document.)

A Yes, sir.

Q Now, on that occasion what did Mr. McNamara - is your recollection refreshed?

A Yes, sir.

Q On that occasion, what if anything did Mr. McNamara say with respect to payment or non-payment to Harry Goberman?

A First he did say that he did pay him, then he didn't pay him. First he said he did pay him then he said he didn't pay him when he was on the rampage, you know, and hollering, and then he says, "I could pay you but if I do" -- I don't recall what words he used, but the way I interpreted it is it would get him off the hook in some way or other by paying him -- by paying me.

MR. RITCHIE: I have no further questions.

Oh, I'm sorry, your Honor, I may have some further questions.

BY MR. RITCHIE:

Q With respect to defendant's exhibit AO for identification, what do you understand by the words, "Now that Harry Goberman has been thrown off the project"?

A What do I understand by them, you mean?

Q What do you --

A What do I think that meant?

Q Yes, sir.

A That he was no longer doing the job, he was thrown off of the job.

Q What is "thrown off" mean?

MS. SELTZER: Objection.

MR. LEONE: Objection to this, Judge.

THE COURT: No, he may answer.

A Well, the way I took it he was told that they didn't want his services there any more, to get out, we are going to do it ourselves.

MR. RITCHIE: I have no further questions, your Honor.

(Continued on next page.)

RECROSS-EXAMINATION

BY MR. MEISELMAN:

Q Did there come a time, Mr. Tew, that this job stopped?

A Yes, sir.

MR. RITCHIE: Objection, your Honor, beyond the scope of redirect.

THE COURT: Overruled.

BY MR. MEISELMAN:

Q Can you tell us approximately when that was?

A No, sir, I can't, I'm very poor with dates, to be honest with you.

Q Were you at the job in June, the latter part of June 1972, at the job site?

A I was there several times, sir, I couldn't say for sure what time I was there.

Q I show you defendant's exhibit D for identification and ask you if at any time when you may have been at the job site, which is on Nesconset Highway that you saw this posted on the building (indicating)?

A Yes, sir, I did.

Q What portion of the building was it posted?

A On the front.

MR. MEISELMAN: I offer the same in evidence,

your Honor.

MR. RITCHIE: Your Honor, may I have a voir dire?

Well, I don't ask for a voir dire, but I will oppose this on the grounds that it is hearsay, it is a statement of the Town of Brookhaven Building Department by Inspector Robert Klein, and standing by itself the Government would have no opportunity to cross-examine Mr. Klein, and I would ask that until he has testified that this not be admitted in evidence.

THE COURT: No, the objection is overruled.

What exhibit is that.

THE CLERK: Exhibit D.

Defendant's exhibit D received in evidence.

THE COURT: May I see it, please.

(Document handed to the Court.)

THE COURT: It will be received for the sole and only purpose of showing the issuance of the Order of the Town of Brookhaven, not for the purpose of establishing as a fact that there was any violation. That is quite irrelevant.

The only point on which the sign is of any worth is to show that in fact the Town issued the order to stop construction work, whether it should have or shouldn't have.

MR. MEISELMAN: With your Honor's permission, may I read this to the jury.

THE COURT: No, they have got the idea.

MR. MEISELMAN: I beg your pardon.

THE COURT: Since most of it, most of the words relate to what it is not in evidence for, there is no point in reading it.

MR. MEISELMAN: I will read it only for the purpose your Honor indicated at this moment.

THE COURT: You can read the part that says what I have told the jury.

MR. MEISELMAN: Starting with the words, "Do not continue"?

THE COURT: Yes.

MR. MEISELMAN: (Addressing jury.) "Do not continue with construction or use of premises under penalty of fine and imprisonment or both.

"Town of Brookhaven,

"Building Department,

"Inspector R. Klein."

(Continued on next page.)

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EK:MM
T4R2-1

BY MR. MEISELMAN:

Q Now, you asked -- by the way, in that conversation that you related where Mr. McNamara was upset, that took place in a public place inthe sense that there were other people present, weren't there?

A Yes, sir.

Q Office help and so on?

A No, sir.

Q Do you know who else was present?

A There were other contractors, plumbers, carpenters, or something like that near by.

Q Now, when you told Harry about what Mr. McNamara said, he was not upset, was he?

A No, sir.

Q He wasn't frightened?

A No, sir.

MR. RITCHIE: Objection, your Honor. This was over the telephone.

THE COURT: That is right.

BY MR. MEISELMAN:

Q Did he appear, did he in his conversation appear to you over the telephone to be frightened?

MR. RITCHIE: Objection. He used the word "appear."

BY MR. MEISELMAN:

Q From what he said to you, did you --

THE COURT: What if anything did he say to you about it?

THE WITNESS: What did Harry Goberman say to me when I told him?

THE COURT: Yes.

THE WITNESS: He said, "I pay no attention to it."

BY MR. MEISELMAN:

Q You were also asked by Mr. Ritchie on re-direct about some previous testimony you may have given, and in that connection did you state that Mr.McNamara said something about having given an advance to Harry Goberman?

A I don't recall that, sir.

Q Well, I show you -- I call your attention to page 1355, particularly lines 19 and 20, sir, and I ask you if that refreshes your recollection?

A 19 and 20, sir?

Q Lines 19 and 20.

A Yes, sir.

Q And Mr. McNamara did say to you at that time about an advance to Harry?

MR. RITCHIE: Objection, your Honor.

THE COURT: Overruled.

Did he or didn't he as you recall?

THE WITNESS: I don't recall the word "advance" being used, sir.

MR. MEISELMAN: No further questions.

MR. RITCHIE: Any questions?

REDIRECT EXAMINATION

BY MR. RITCHIE:

Q With respect to the word "advanced" on page 1355 --

THE COURT: He says he has no recollection of it.

MR. RITCHIE: Your Honor, he did testify to that.

THE COURT: I don't care about that, he said his recollection was not refreshed by counsel with reference to that passage.

MR. RITCHIE: I understand that, your Honor.

BY MR. RITCHIE:

Q When you used -- did you use the word "advanced" in your prior testimony?

A I don't recall, sir.

Q Could you just read those two lines again.

A Which ones, sir?

Q 19 and 20.

(the witness perused the document.)

A Yes, sir, I recollect this.

Q When you used the word "advanced" in that testimony, were you saying that you weren't "advanced" with certain words and thatyou didn't understand them, is that what you meant by "advanced" in that context?

A Yes, that is correct, exactly, he stated some kind of word to me but I wasn't "advanced" in comprehension, what he said I didn't understand, I still today couldn't tell you what word he used when he did make the statement.

Q So when you used that word "advanced" inyour prior testimony, you were not saying that Mr. McNamara had used that word?

A No, I wasn't, I used it that I wasn't "advanced" enough to pick up what he was saying, thatis what I was referring to.

MR. RITCHIE: I have no further questions.

RE-CROSS-EXAMINATION

BY MR. MEISELMAN:

Q So when Mr. McNamara was discussing with you the question of payment -- the question of advances, if any or anything else, what you had meant to say was that you didn't understand what Mr. McNamara was saying because you weren't that "advanced"; is that correct?

A Yes, sir, the part that I wasn't that "advanced."

MR. MEISELMAN: Thank you.

I have no further questions.

THE WITNESS: Okay.

MR. RITCHIE: Your Honor --

THE COURT: Oh, please, gentlemen.

MR. RITCHIE: I will forego any further questions. Thank you, Mr. Tew.

THE WITNESS: May I leave?

THE COURT: Yes.

(The witness was excused.)

MR. RITCHIE: Your Honor, if I may, we have something to take up outside of the presence of the Jury.

THE COURT: We will have a short recess.

Members of the Jury:

Please don't discuss the case with one another or with anyone not on the Jury until it is given to you to decide.

(At 11:35 o'clock a.m. the Jury left the courtroom.)

MR. MEISELMAN: May I step outside?

THE COURT: I understand there is something that counsel wishes to take up.

MR. MEISELMAN: I am sorry.

MR. RITCHIE: Your Honor, Mr. Erlich is here, I didn't expect him for a while, and after that I have

Mr. Goberman available for --

THE COURT: Who is Mr. Erlich?

MR. RITCHIE: Mr. Erlich is an Assistant District Attorney from Suffolk County.

THE COURT: You request professional courtesy to him?

MR. RITCHIE: Yes, your Honor.

I had originally scheduled him for 2:00 o'clock.

THE COURT: What do you say, gentlemen?

MR. GILLEN: No objection.

MR. RITCHIE: He will be somewhat out of order, we haven't had the testimony of Mr. McMullen to which Mr. Erlich's testimony relates.

THE COURT: You mean it will be a little bumpy? Is it going to confuse the Jury to get Mr. Erlich's testimony in now? They have heard so much about everything.

MR. RITCHIE: I don't believe this would confuse them.

THE COURT: Then we will do it that way.

All right, gentlemen?

MR. LEONE: Yes, sir.

MR. RITCHIE: The other point we have to take up is with respect to Mr. Goberman's further cross-examination.

MR. MEISELMAN: I have about five or seven questions for Mr. Harold Goberman relating to the books and records and to one contract that he may have -- one purchase that he made, then I can release Mr. Goberman.

MR. RITCHIE: I would just like to know what it is with regard to.

THE COURT: What is the point of it?

MR. RITCHIE: What is it with regard?

MR. MEISELMAN: Spoliation of evidence.

We have been trying to get his books of account and payroll book and I think through him we will lay the foundation of spoliation of those books of account and the payroll book to show that he was not -- rather that HarMac was not the contractor on this job.

MR. RITCHIE: Your Honor, spoliation, I don't think it is quite relevant, it is a question for another proceeding.

THE COURT: No, if he is not a part, that might be relevant in a civil action, but I suppose spoliation of records, if it exists, does not add to credibility, it might even be thought to diminish one's credibility as a witness.

The other business about who was or wasn't a party to the contract, the indictment alleges that

HarMac was, and if there is any competent evidence that it wasn't and that evidence was spoiled, without the knowledge of the Government, then the defendants might nevertheless be entitled to an instruction, for what it were worth, that the Jury could take that into account in determining who were the parties to the contract.

Then you would have another small item on the variances question, which is quite an important one.

So this is one of our more important molehills.

MR. RITCHIE: Your Honor, with respect to the question of spoliation, if it is spoliation with regard to Mr. Goberman's checks, the checks are really irrelevant to the entire --

THE COURT: I am sorry.

MR. RITCHIE: I say the checks and the other documents concerning HarMac are really irrelevant to this proceeding, they deal solely with the course of the construction, and assuming the worst, that there was in fact spoliation of checks, of documents --

MR. MEISELMAN: Books.

MR. RITCHIE: Spoliation of the contract, the books, the ledger accounts --

MR. MEISELMAN: Books of account.

MR. RITCHIE: Well, I don't see what relevancy

it does have to these proceedings, even assuming the worst, that he did in fact spoliate or spoil them.

MR. MEISELMAN: The books would show, your Honor, to the best of my knowledge, that the labor was not paid for by either Harold Goberman individually or by any of his corporations, but it was by a different corporation, and that payments for materials were not paid for by HarMac but by a different corporation.

THE COURT: Well, what corporation?

MR. MEISELMAN: LenAl.

THE COURT: Well, this is one more monumental difference between facts as alleged in a paragraph of the indictment that it is not HarMac.

MR. MEISELMAN: There is one other corporation, your Honor, which would show it from Mr. Goberman's records which we were not aware of until I saw some of the correspondence, there was a corporation through which he purchased called Harold N. Goben, Inc.

THE COURT: He wants to prove that Mr. McNamara had a motive to be very monumental and toweringly angry with Mr. Goberman to the point of making threats against him.

I don't see why you should stand in his way. You don't generally prove Federal cases that way, that is just done on TV usually, but if he wants to prove

motivation to use violence on him, on Goberman, let him.

MR. RITCHIE: Yes, your Honor.

THE COURT: We will take a short recess.

(At 11:45 o'clock a.m. a recess was taken.)

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(Continued on Next page.)

MP:tr
T5/R1



(The jury is in the jury box.)

MS. KATZ: The Government calls as its next witness, John Ehrlich.

J O H N G. E H R L I C H, a witness called on behalf of the United States of America was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MS. KATZ:

Q Mr. Ehrlich, what is your profession?

A I am an Assistant District Attorney for Suffolk County and Chief of the Fraud Bureau of the District Attorney's Office in Suffolk County.

Q How long have you been with the District Attorney's Office?

A 11 years.

Q How long have you been chief of the Frauds Bureau?

A Since its inception, about four years now.

Q What were your duties on June 9, 1972?

A Chief of the Frauds Bureau.

Q On June 9, 1972, did you have occasion to see one Thomas McNamara?

A Yes, I did.

Q Where did you see him?

A I saw him in the law office of Desmond J. O'Sullivan, in Suffolk County.

Q Do you recall who else was present at this meeting?

A An investigator from my office, James Brennan, Mr. McNamara, Thomas McNamara and John McNamara, and the accountant for the McNamara's whose name I don't recall.

Q Was Mr. McNamara represented by Counsel at this meeting?

A Yes, Mr. O'Sullivan.

Q What if anything was said at that meeting?

A Well, there was a complaint by Mr. McNamara to Mr. O'Sullivan involving a contractual relationship between one Harry Goberman, a builder, and Thomas McNamara, about the construction of a building.

I think in Port Jefferson.

Q What was the substance of the complaint?

A The substance of the complaint was Harry Goberman had submitted to Mr. McNamara vouchers for payment and these vouchers represented payments that Mr. Goberman had made to subcontractors.

Q Do you know what type of building this involved? The construction.

A I know Mr. McNamara is involved in the auto-

mobile business, I assume an expansion of his automobile business.

Q At this meeting, did Mr. Thomas McNamara make any statements as to what type of person Harry Goberman was?

A I don't recall his words. I know I didn't care for them. I can't tell you exactly what he said. I don't recall.

He did feel he was being cheated by Mr. Goberman, which was the reason I was there.

Q This is Mr. Thomas McNamara who made these statements, is that correct?

A Yes.

Q Was there any mention made of any threats by Harry Goberman to Thomas McNamara?

A Not in presence, no.

Q Was there any mention made that Harry Goberman at anytime had pulled a gun on Thomas McNamara?

A No.

Q Did Mr. Thomas McNamara ever say that Harry Goberman had kicked, spat, or pushed him?

MR. MEISELMAN: Objection, leading.

THE COURT: Well, I think under the circumstances it is permissible, Mr. Meiselman, otherwise we would get into an awful lot of other stuff just

for the purpose of later arguing it did not contain some things.

THE WITNESS: May I have the question, please?

(Record read.)

A Not to my recollection.

Q At this meeting, was there any mention that Harry Goberman had threatened Mr. McNamara or his family in anyway?

A No, there wasn't.

Q What if anything was said about a meeting between Harry Goberman and Thomas McNamara on June 5, 1972?

A I don't recall.

If I could look at my report, I could refresh my recollection.

Q This has been marked Government's Exhibit 3517.

(Pause.)

Q Mr. Ehrlich, is this a report that you prepared concerning the June 9th meeting?

A That is correct. It doesn't help me to answer the question. I don't recall specifically that date or mentioning of a conversation between the two of them on June 5.

Q Is your department a specialized department?

A Yes, it is.

Q What type of cases does your bureau usually handle?

A We specialize in white colar crimes. We get involved in almost every kind of crime. We have jurisdiction for all crimes under the New York Penal Law in Suffolk County.

Q Could you elaborate as to what kind of specific offences that your bureau might get involved in?

A Very heavy in the area of fraud, grand larceny, stock manipulations, swindles, the whole gamut of fraud. We have three squads in the bureau, Bunco, which is anything from Bunco playing on old people, Forgery Squad and Major Fraud Squad.

They do run on occasion -- for instance, we have an Arson Squad in the Police Department. A straight arson is handled by the Arson Squad of the Police Department.

However, if it involves extortion we get involved.

Q Does your bureau ever handle any offence that deals in violence?

A Yes.

MR. GILLEN: The witness is testifying to all violations of the New York Penal Code.

THE COURT: I think he covered that.

Would a case in which there was a question of violence come to you in the first instance?

THE WITNESS: No, in the first instance, an assault between a husband and a wife or a knifing on the street, we wouldn't get.

However, that could happend but it is not a normal procedure.

Q How was the meeting on June 9th initiated?

A It was initiated by a call from Mr. O'Sullivan, who I know very well and who was a former District Attorney in Suffolk County.

He told me about the complaint he had about larceny and theft of the building contract. He said all of the people were in his office and it was a Friday afternoon and that office is on my way home so rather than have them all come down to my office I stopped by.

Mr. Brennan, an investigator from my office met me there. It was late in the afternoon.

Q Subsequent to June 9, 1972, have you had any contact with either Desmond O'Sullivan or Thomas McNamara or the son John McNamara?

A Not with the McNamara's. I haven't seen them, except since -- wait a minute. Could I ask a question? I am sorry, the question is when did I last see Mr.

McNamara. I don't know if I should answer the question or not.

THE COURT: If it was in a non-professional manner, I don't think there is a problem --

MR. LEONE: I think we understand the problem. Can we have a side bar?

(The following took place at side bar.)

MR. LEONE: I think he doesn't want to say he saw them at the last trial.

THE COURT: That's what I assume.

MR. LEONE: That is all.

THE COURT: Is it all right?

We have been talking about it all along.

MR. RITCHIE: I think it is the first trial, your Honor, and that is the problem.

THE COURT: Is it a problem?

MR. LEONE: No, but he doesn't know that.

(The following took place in open court.)

THE COURT: All counsel seem to be in agreement. The jury is aware there was an earlier trial.

THE WITNESS: I didn't know that.

I saw Mr. McNamara once since the June 9th meeting, that was here.

Q Have you seen Mr. Desmond O'Sullivan since

the June 9th meeting?

A Yes, quite frequently.

Q Have you discussed the complaint of the McNamara's with Mr. O'Sullivan at anytime other than the January 9th meeting?

A I am sure I have.

MS. KATZ: The Government has no further questions at this time.

CROSS-EXAMINATION

BY MR. GILLEN:

Q My name is Michael Gillen and I am one of counsel here.

A Yes.

Q Sir, can you tell us please -- I will show you of course this -- what time of the day or evening this meeting took place in Mr. O'Sullivan's office?

A Approximately 7:00 p.m. it appears. I thought it was a little earlier. The report indicates 7:00/

Q Do you know how long that meeting took?

A Approximately an hour.

Q Were there many document displayed?

A Yes.

Q These documents were discussed between yourself and Mr. O'Sullivan?

A Yes.

Q I believe you said you an investigator there?

A Yes.

Q Were there any sorts of submeetings going on, more than one conversation going on at one time?

A I think so. The two accountants, Mr. McNamara's accountant and our accountant went over papers and we continued to talk.

Q Is that Mr. Orsini?

A I don't recall.

Q A young fellow?

A Yes.

Q There is no mention of June 5 in any of your reports?

A That is correct.

MR. GILLEN: Your Honor, I have no further questions.

Thank you, sir.

THE COURT: Any further questions?

No further questions --

MR. CLERK; Mr. Gillen?

MR. GILLEN: Excuse me.

(Pause.)

Q There is no question that Mr. O'Sullivan

instituted this complaint for and on behalf of Mr. McNamara?

A No question.

MR. GILLEN: Thank you, I have no more questions.

MS. KATZ: The Government has no further questions.

THE COURT: You are excused, Mr. Ehrlich.

MR. RITCHIE: At this time the Government would recall Mr. Goberman, Harold Goberman for further cross-examination.

(Pause.)

MR. LEONE: Before that, may we have a side bar?

(The following took place at side bar.)

MR. LEONE: Your Honor, I don't want this to appear to be a grandstand play in front of the jury, but Agent Mullen is having conversations with this sweet young lady and one of the jurors is smiling at what they are saying. It is a difficult situation. The jury is only a foot and a half away from them.

THE COURT: It is considerably more than a foot and a half.

MR. LEONE: Two feet, five feet? Whatever it is, it is obvious to me that they hear and they are

reacting as to what is said. I am sure it is unintentional but please, can it stop?

THE COURT: Do not do that. He has been around too long and he should know better.

MR. RITCHIE: There will come times when the Government --

THE COURT: And she can signal and McMullen should signal and this young lady can go and talk to him outside.

MR. RITCHIE: I suggest we move the table further away.

I am sure your Honor --

THE COURT: Also do as I say.

The other thing I want to know, I can refresh my recollection from my notes, but did Mr. Ehrlich say that Mr. Harold Goberman was present?

MR. RITCHIE: No, he didn't.

MR. LEONE: No.

THE COURT: He was not?

MR. LEONE: He was not.

THE COURT: I take it he didn't say it because --

MR. LEONE: He wasn't there.

MR. RITCHIE: Your Honor, would it be possible

to break early and start early? I must apologize to the Court.

I really anticipated Mr. Gillen's cross to be more extensive. Once again --

THE COURT: So had he but he decided that discretion was the better valor.

We have Mr. Goberman?

MR. RITCHIE: Yes, we have.

THE COURT: If we break early -- well, let's see how early.

(Cont'd on next page.)

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f5R1

(The following took place in open Court.)

THE CLERK: Yes, Mr. Goberman, step up.

THE COURT: Mr. Goberman, you are still under oath. You will not be resworn because of the oath you took at the beginning which covers the testimony you are now asked to give.

MR. GOBERMAN: Yes, your Honor.

H A R O L D G O B E R M A N, having been previously sworn resumed the stand and further testified as follows:

CROSS-EXAMINATION

BY MR. MEISELMAN:

Q Mr. Goberman, you were subpoened the other day tobring in all of your books and records, particularly your payroll books and books of account both for yourself and for HarMac?

A Yes.

Q I show you defendant's Exhibit AL for identification and I ask you if this is what you produced pursuant to that subpoena?

THE COURT: Are the Xeroxes in there still?

MR. RITCHIE: I am not quite certain; yes, your Honor, there are Xeroxes present. A Xerox of the material that they are paper clipped to.

THE WITNESS: That is correct. That is what I produced.

Goberman-cross

Q Is that all the books and records and papers that you individually and on behalf of HarMac corporation have in your possession?

A Yes.

Q Do you have there a payroll book or any books of account?

A Yes, I do.

Q Would you produce a payroll book and books of account?

A Sir, as I --

Q From there, before you say --

A You said in my possession. The other ones are not in my possession.

Q From what you produced here, have you produced a payroll book or any book of account?

A Sir, you said what I had in my possession. I don't have the other books in my possession.

Q Did you at any time ever give those books to any attorney?

A I gave papers and so forth to the attorneys --

Q I am asking, the payroll book and books of account to any attorneys?

A I do not believe so.

Q Did you ever give a payroll book, checkbook and

Goberman-cross

books of account, to a firm known as Kant, O'Har, Bloknick, and Haber?

A I could not tell you if I gave it to them but they do not have it.

Q Is it not a fact, sir, that Kant, Blodnick, and Haber delivered such books to you last year?

A I believe they did. That's why I said they do not have them.

Q Where are the books?

A In the state of North Carolina.

Q They are not here?

A No sir, I said I do not have the funds available to get them.

Q Now, didyou at any time testify as to the existence of a corporation known as Harry N. Goben, Inc?

MR. RITCHIE: Objection, your Honor. It's irrelevant.

THE COURT: Overruled.

A Will you please repeat that?

Q You testified on direct examination or cross with reference to a corporation known as Harry N. Goben, Inc.?

A I don't believe so.

Q Did you ever hear of such a corporation?

A Not to my knowledge.

Goberman-cross

Q In your papers that you produced, there is a document, a photostat of which I now show you.

May I have it marked, please?

THE CLERK: Part of AL?

MR. WEISELMAN: It is part of the other, yes.

THE COURT: AL-1.

THE CLERK: Exhibit --

MR. RITCHIE: I was going to suggest that.

THE CLERK: AL-1 for identification, yes sir.

(So marked for identification.)

Q Is the original from which the photostat was made Defendant's Exhibit AL-1 in your folder?

A Sir, there is no such corporation.

Q I am asking you a simple question, is it in your folder?

A It is a bill of Lox Creen --

Q Did Lox Creen Company, Inc. bill Harry N. Goben, Inc. for materials on this job?

A I believe so. It was incorrect and I paid him a HarMac check. It is in there.

Q I asked you a simple question.

A It had to have an explanation. There is no such corporation. the

Q Perhaps re may or may not -- were you billed

under that name?

A Yes, incorrectly.

Q Did you ever write to Lox Cleen Company and advise them there was a --

A I sent a letter.

Q Did you or did you not --

MR. RITCHIE: Objection. I object on the grounds of relevancy.

THE COURT: Please. It can be received.

Q Did you ever write one, Mr. Goberman?

A No, I --

Q Did you ever write to them?

A I see --

Q Did you --

A You want it seven times?

THE COURT: Please. You will ask the questions fairly. I told you before.

MR. MEISELMAN: I take exception.

THE COURT: You may do so. It's not necessary and they haven't been for thirty years.

A As I said, no sir, I sent them a check under HarMac.

Q You said you sent a check under HarMac? I show you AL-1, is there a stamp on it marked paid?

Goberman-cross

A Yes, sir, there is.

Q Is that stamp -- does that stamp say LenAl, paid?

A Yes, as I said I was working in LenAl --

Q Please.

THE COURT: Please answer the questions that are asked.

A Yes, sir, it is.

Q Did you ever deliver any of your books of account, your payroll books and your checkbook, to an Emmanuel Shaelos?

A I do not believe so. From what I know he does not have them in his possession, they are in the safe in North Carolina.

Q Who in the state of North Carolina now has those books?

A They are in storage with my furniture. I moved back from North Carolina sometime in the early part of this year.

Q A storage warehouse?

A Yes.

Q When you moved back the early part of this year, didyou not know you would testify here?

A Yes sir, I did.

Q Did you not also have an action pending on a breech of contract against Thomas McNamara?

A Yes, I did.

Q Isn't it a fact, sir, that Kantor, Blodnick, and Haber returned those books to you in the early part of this year?

A As I said, sir, they returned them to me. I have them in the state of North Carolina.

Q There was no place you could keep them here?

A At the time I lived in North Carolina and I brought all my possessions down there with me.

Q Tellme when you lived in North Carolina?

A From approximately September, October, 1973, until approximately -- that is officially live there -- sometime early this year.

Q Didn't you testify, sir, in an examination before trial, September or October, or November 1973 in Nassau County?

A Pardon me?

Q Didn't you testify in September or October or November of 1973 in a deposition in Nassau County?

MR. RITCHIE: I object, unless we fix the dates.

Q During the months of September, October, November, your Honor.

THE COURT: I think we had reference to the date

before.

MR. RITCHIE: I would like to clear up, is it during each of those months?

THE COURT: At some time, not necessarily day to day throughout the three months.

Did you in each of those months at some time testify at an examination before trial in a civil case?

THE WITNESS: I believe so.

Q Did you testify under oath in those depositions?

A Yes, I did.

Q Were you asked your address under oath in those examinations?

A That is correct.

Q What address did you give?

A I have had a few residences.

Q What address did you have?

A I don't recall.

Q You didn't give the one in South Carolina, did you?

THE COURT: North Carolina.

Q North Carolina?

A I dont recall, sir.

THE COURT: Do counsel agree what it was?

MR. MEISELMAN: Can we stipulate to that, sir?

MR. RITCHIE: I will take Mr. Meiselman's word for it without any question whatsoever.

THE COURT: What was it?

Q Isn't it a fact, sir, in September, October, November of 1973, you were working with a firm known by the name of Metro House in Nassau County, New York?

A Can you repeat that?

(Whereupon the last question was read by the reporter.)

A No sir, it is not a fact.

Q When did you start working with Metro House?

A I would say approximately towards September, 1972.

Q When did you quit Metro House?

A August, '73.

Q That's when you went to Carolina?

A Yes.

Q You established a residence there?

A One of my residences, yes.

Q Whatwas your address in North Carolina?

A I don't recall at this time, sir.

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(Continued on next page.)

CROSS-EXAMINATION

BY MR. MEISELMAN: (Cont.)

Q Do you have any papers, documents or records which in any way can refresh your recollection as to your address in North Carolina?

MR. RITCHIE: Objection, your Honor, on the grounds of relevancy.

THE COURT: Yes, let us move along please.

MR. MEISELMAN: No further questions, your Honor.

REDIRECT EXAMINATION

BY MR. RITCHIE:

Q While Harmac Contracting Corporation was active, did you have an office anywhere?

A I think officially 118 Southern Boulevard, Hauppauge, and also for paper filing 102 Main Street, Port Jefferson, I think.

Q Did you at any time use the offices of your brother's company?

A Yes, I did.

Q Where was that located?

A 394 Hoffman Lane, Hauppauge, New York.

Q Did you yourself have a stamp in that office for Harmac Contracting?

A No sir, I did not.

Q If you did pay a bill and you were working in that office, what's the stamp that you would use --

MR. MEISELMAN: Objection, your Honor.

THE COURT: On what ground?

MR. MEISELMAN: It is leading the witness right down the garden path.

THE COURT: It hardly is when he does not suggest the answer to the question.

MR. MEISELMAN: I take it as a suggestion.

THE COURT: It is hardly suggestive.

A No sir, I did not. I was working in Len-Al's office and my sister-in-law did the bookkeeping for me and she stamped the bills with Len-Al's stamp as they were paid.

Q With what checking account were those bills paid?

A Harmac.

Q Was that the one that you opened at the Marine Midland Tinker National Bank?

A Yes, sir.

Q Was it called the Marine Midland Tinker National Bank when you opened the account there?

A Yes, it was.

Q Now, when you testified in those depositions

in Nassau County, where were you working?

A I was not working at the time.

Q Where were you living?

A I was living in Smithtown and living in North Carolina.

Q What brought you down to North Carolina?

A - What brought me down there?

Q Yes.

A For business reasons and I wanted to keep out of some people's way.

Q You were down there for business reasons, is that correct?

A Correct.

Q What town?

A Charlotte, North Carolina.

Q You don't recall the exact address?

A No sir, I do not.

Q But it was in Charlotte, North Carolina?

A Correct.

Q Did you have a phone there?

A Yes, sir.

Q Was it listed under your name?

A No, sir.

Q What was it listed under?

A If I am not mistaken it was listed under my partner's name, Sussman.

Q What is that name?

A Joel.

Q Joel what?

A Sussman.

Q Joel Sussman, Charlotte, North Carolina?

A Correct.

Q The telephone was listed in his name?

A Correct.

MR. RITCHIE: I have no further questions, your Honor.

MR. MEISELMAN: No questions, your Honor.

THE COURT: You may step down, Mr. Goberman.

THE WITNESS: Thank you, your Honor.

THE COURT: AO-1 was that offered?

MR. MEISELMAN: Pardon me, I offered it into evidence.

MR. RITCHIE: I object only on the grounds of relevancy.

THE COURT: It will be received.

THE CLERK: Marked Defendant's exhibit AO-1 in evidence.

(So marked.)

MR. RITCHIE: Your Honor, I have previously informed the Court that my next witness won't be available until 1:30.

I ask that we adjourn until 1:30.

THE COURT: All right, 1:35.

Please do not discuss the case with one another or anyone not on the jury until it is given to you to decide.

(Jury leaves the Courtroom.)

MR.RITCHIE: Your Honor, about the photographs.

Mr. McMullen this morning went up to the FBI laboratory and had copies of the photographs that were displayed to Mr. Tiabbi developed. They are all basically the same shot, taken at different angles.

MR. LEONE: Of whom?

MR. RITCHIE: Of Alphonse Merolla as he is captioned here.

MR. GILLEN: Who else?

MR. LEONE: The four photographs depict the same individual, Alphonse Merolla?

MR. RITCHIE: Yes, your Honor.

THE COURT: Not alone.

There is someone at his right-hand -- at his left-hand.

MR.RITCHIE: In three of the photographs, your

Honor, there are three individuals visible and in the fourth photograph there are three individuals plus an additional.

THE COURT: I see only two people that are recognizable. The other two could both be me from the quantity of here.

MS. SELTZER: May I see them?

(Shown to counsel.)

THE COURT: The other two show one other gentleman seated across from Alphonse Merolla.

MR. LEONE: This was supposed to be a photographic --

MR. RITCHIE: The Government' isn't claiming that it was a photographic spread.

MR. LEONE: The 302 was a little misleading.

MR. RITCHIE: That wasn't intentional. It stated "A group of photographs." It did not say "A photographic spread."

It was made available at the request of the defense counsel. The Government was not attempting to mislead, not in any respect.

THE COURT: As I understand it, Mr. McMullen, you have a 32302 to cover this point?

AGENT MC MULLEN: Yes.

THE COURT: Does anyone say that Agent McMullen's

memorandum said that Mr. Tiabbi said that one of the individuals resembled Alphonse Merolla and indicated which one of the four men he said?

MR. LEONE: No.

That is why I assumed it was a picture of a single individual.

If you read the 302, it looks like --

AGENT MC MULLEN: That is not the ordinary procedure.

THE COURT: Let us look at it together, because none of this is yet in evidence.

MR. RITCHIE: Yes, your Honor.

THE COURT: Is that right?

MR. RITCHIE: Yes, there has been no identification.

THE COURT: Or reference to this interview between Mr. Tiabbi and Mr. McMullen with respect to this point?

MR. RITCHIE: Yes, and there won't be. The Government doesn't intend to recall Mr. Tiabbi for that purpose.

MR. LEONE: Then what are we doing?

THE COURT: Making a disclosure to you people.

MR. LEONE: The conversation briefly was that Mr. Tiabbi would make an in-Court identification.

With that representation I have nothing further to say to the Court.

THE COURT: Yes, you do. You are to ask Mr. McMullen if the one Mr. Tiabbi referred to was anyone other than Mr. Alphonse Merolla.

MR. LEONE: I don't want to go even that far.

MR. RITCHIE: I only did it to clear up any questions.

MR. LEONE: All there had to be said was that there would not be an in-Court identification.

THE COURT: I think you also knew what was in the 302.

He had no choice.

MR. LEONE: Why belabor the point?

The point is that he told me there would be an in-Court identification.

MR. RITCHIE: Before I was able to come up with the photos.

(Continued on next page.)

PM next

EK

AFTERNOON SESSION

1:35 p.m.

Karr/tr
T1/R1 p.m.

October 15, 1974

(The following occurred in the absence of the jury.)

MR. RITCHIE: Your Honor, Mr. Leone has something and I have something.

I have to be as 3500 material a report of interview dated 2/15/73 of Mr. Thomas McNamara by the Special Agent Richard McMullen, and I also was present, your Honor.

THE COURT: This is an interview of whom?

MR. RITCHIE: Of Mr. Thomas McNamara, your Honor.

THE CLERK: 3500-25.

MR. RITCHIE: In that respect, your Honor, I think defense counsel are aware of the existence of that memorandum and basically of its contents.

Now there is one problem area that I can foresee. I think this is perfectly admissbile but defense counsel may not, and that has to do with a statement by Mr. Thomas McNamara that -- well, this was post -- this was not in the course of the furtherance of the conspiracy whatsoever, your Honor, except perhaps in the cause and furtherance of the

coverup of the conspiracy --

THE COURT: We don't agree with that term in this court.

MR. RITCHIE: Of the concealment of the conspiracy.

The statement that the Government believes is admissible is the following: -- I had it, your Honor, a moment ago -- well, it concerns Mr. McNamara having said that he, during the course of what he considered to be problems with Harold Goberman, went to speak with one of his salesmen, one Angelo Merella, and that as a result of that meeting he later on saw a brother, otherwise unidentified, of Angelo Merella about these problems and that this other individual then contacted Mr. Goberman.

Now in this case I don't think we have any Bruton problem, we have three individuals who will be identified as brothers of -- two, two individuals -- I am sorry -- who have been identified as brothers of Angelo Merolla, and for that reason there isn't that pointing finger which is the heart and soul of what is wrong with Bruton statements instead we have an ambiguity, instead we have the possibility that it could have been Mr. Rocco Merolla and not Alphonse

Merolla.

MS. SELTZER: Your Honor, I would dispute Mr. Ritchie's contention I think especially in this trial where the other two brothers of Alphonse M. Merolla are not present.

The inference is much stronger that the person who was meant in that statement was Alphonse M. Merolla, and I would object to the use of that statement.

THE COURT: Well, what other value have it, if it doesn't do that then I don't think it seems to do anything.

MR. RITCHIE: I think it establishes that Mr. McNamara didn't consider the police, the District Attorney to be the only acceptable form of redressing his problems with Mr. Goberman, and that he attempted to have other people at least speak with Mr. Goberman.

I think it establishes an association between Mr. McNamara and at least a brother, whoever that may be, with Angelo Merolla and also the brother.

MR. SELTZER: Which brother?

MR. RITCHIE: A brother, any brother.

The Government is not going to attempt to violate Mr. Alphonse Merolla's Sixth Amendment right

to confrontation.

I think it is admissible, your Honor could cure it, it would not be admissible as against anybody other than Mr. Thomas McNamara and it would be absolutely no problem.

THE COURT: What bothers me about it is that I don't readily think it lends itself to redactation because if you attempted to redact it then you would bring in John DeLiso. You see, if you just left the name out -- well, you would have no other purpose really than to show that Mr. McNamara instead of going to the police or a lawyer made an appeal through one of his salesmen to some mysterious and non-police enforcer.

MR. RITCHIE: Well, that is some mysterious non-police perhaps negotiator.

THE COURT: Well --

MR. RITCHIE: That is an inference that can be drawn, but we are not going into --

THE COURT: If that is the inference, then it is inadmissible because irrelevant.

You see, it can only be for the purpose of showing Mr. McNamara hooking himself into a conspiratorial setup, such as that alleged in the complaint,

otherwise if all he did was to go to, let us assume, Alphonse M. Merolla or Angelo Merolla, rather, one of his salesmen, and say, "Who in the world can I get to help me deal with this man Goberman, we are never going to get the thing finished," and then we all hope that Angelo would have said, "Well, I know an excellent law firm in Babylon and another one in Patchouge and I know people -- " well, all you really might need here is a consulting architect who can hook on this thing, but really the last thing in the world you would expect is that he would say, "Well, you get a thug, they are very good in negotiating, and I know some who have, by an odd coincidence, the same last name as I have but there are so many Merollas in this world," and surely having this read to the jury won't advance us at all.

I don't know, Mr. Ritchie, I guess maybe I am a little bit oversensitized by reason of a fresh reading as to that new double jeapordy decision in the Second Circuit where the Court declared a mistrial rather than have something like that goin in and the result was that the defendant walked out of the case altogether --

ek;pc
1/2pm

MR. RITCHIE: Your Honor, under the entire line of cases involving Bruton, the determining factor has always been whether the statement points directly with an accusatorial finger at another co-defendant on trial.

In this case it doesn't do that, I submit.

THE COURT: I am afraid I would have to disagree. As I say, there is no point in offering it unless it is offered to finger Merolla, one of them, and what we would have to do is, we would have to explain, Well, there are a lot of Merollas who are indicted and acquited, one was indicted but not tried, and before you we have him in on this trial now. I am sure that is going to help an awful lot.

MR. RITCHIE: Your Honor, if it is explained that it is admissible as against Thomas McNamarra, I think it should be admissible that Mr. McNamarra did seek out the aid of the Merollas.

MS. SELTZER: Your Honor --

THE COURT: I'm afraid I can't agree with you.

I think it is right within Bruton. The fact that it isn't a Bruton through the heart, but just through the lung and that death wouldn't ensue for another 15 minutes later than it would if it were through the heart, that hardly makes an difference;

the moment or length of time we take to spell it out into full impact is just too small.

MR. RITCHIE: Your Honor, would the Court suppress any and all testimony regarding Mr. McNamarra having gone to Angelo Merolla about this problem?

THE COURT: Well, I take it the Government doesn't want to get into a question of what happened to Angelo. You see, I think you had better stay away from it, I think it would start, Mr. Ritchie, it may well start something we can't control.

MR. RITCHIE: Yes, your Honor.

Your Honor's ruling would basically be against?

THE COURT: Basically Bruton, yes, because I don't see how we can control inferences. 12 people are so bright, and that is why we have them here, 12 people thinking about something, well, they don't miss a trick and I just think it would frighten me to death. I am a little bit afraid that if I were on a jury, I would put two and two and get 5, 6, 7, somewhere in that range.

MR. RITCHIE: Yes, your Honor.

I will then delete any reference to it whatsoever.

THE COURT: I think Mr. Leone was the only one to bring something up in connection with Allan Goberman.

MR. LEONE: Yes, from the 302 and speaking with Mr. Ritchie, I believe it is the Government's expectation that Allan Goberman will be asked to make an in-court identification of Alphonse Merolla.

THE COURT: On the basis of what he saw on June 5th?

MR. LEONE: Correct.

THE COURT: And not otherwise?

MR. LEONE: Well, your Honor, I don't quite get you.

THE COURT: Well, I mean -- I don't recall the full range of Allan Goberman's testimony, but the significant testimony related to June 5th.

MR. LEONE: June 5th at McNamarra's office.

THE COURT: Yes, at McNamarra's office, and not at the job site.

MR. LEONE: Right.

My understanding is that he will identify my client, Alphonse Merolla, as being one of the persons present there; the 302 indicates that on August 24th, '73, Mr. Goberman was shown a group of photographs and he identified these photographs

of Alphonse Merolla as being identical to one of the individuals who in June, '72, took his brother, Harold Goberman, into an office of McNamarra Buick, Inc., on Main Street, Port Jefferson, and beat him.

It is my understanding that that Alphone Merolla is my client in this case.

THE COURT: Yes, that is right.

MR. RITCHIE: That is correct.

THE COURT: Mr. Ritchie?

MR. RITCHIE: Yes, that is correct.

THE COURT: Now, I think the question is whether that is a group of photographs or grouped -- strike out "of" -- photograph , and whether if so, it is the same photograph that we were looking at just before.

MR. RITCHIE: It is, your Honor, yes, your Honor.

THE COURT: Mr. Leone says he doesn't like that.

MR. LEONE: Right, I definitely think it comes within being an unfair array of photographs which may have impressed upon the mind of the witness the image of my client, Alphonse Merolla, therefore tainting the identification.

THE COURT: Is Allan Goberman the next witness?

MR. RITCHIE: Your Honor, I was going to have

Mr. McMullen as the next witness. I hadn't intended, but we are running short of witnesses today, so I intend to put Mr. McMullen on the stand.

THE COURT: He says such flattering things about everybody, I'm sure, Mr. McMullen.

Well , I don't want to suggest ideas, but I take it your motion or your application here then is to suppress the use of Allan Goberman's identification?

MR. LEONE: Yes, sir.

THE COURT: In court or elsewhere , on the ground that the eshibition of the photograph was violative of the fair standard of Simmons, etcetera.

MR. LEONE: Simmons.

THE COURT: And I suppose you might ask Mr. McMullen what he can recall of the exact circumstances of it.

MR. LEONE: Yes. We already know that the photographs that were used --

THE COURT: Never mind that, I mean usually there is more to it than that.

MR. LEONE: Well, fine.

MR. MC MULLEN: You are asking what were the circumstances?

THE COURT: No, no.

THE COURT: Now, do you want to do that now or later, Mr. Leone, because as I understand it, Mr. McMullen is the next witness.

MR. LEONE: All right, let us do it now.

THE COURT: All right, then.

R I C H A R D M C M U L L E N, called as a witness on voir dire, having been duly sworn by the clerk of the Court, duly testified as follows:

MR. LEONE: May I proceed, then?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. LEONE:

Q Agent McMullen, on August 24, 1973, did you have occasion to interview one Allan Goberman, residing at 14 Hoffman Lane, New York?

A Yes, sir, I did.

Q And at that interview, did you have in your possession certain photographs?

A Yes, sir, I did.

Q Do you have those photographs with you, please?

A I don't have them.

MR. LEONE: May I have them?

THE COURT: There -- They are here in the courtroom, aren't they?

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McMullen-direct

THE WITNESS: Yes, sir, they are here in the courtroom.

(Photographs were then handed to Mr. Leone By Mr. Ritchie.)

BY MR. LEONE:

Q Now, did you have occasion to display those photographs to Mr. Goberman, Allan Goberman, at that time?

A Yes, sir, I did.

Q What was the purpose of your displaying those photographs to him?

A To ascertain if he recognized any individuals in the photographs as being present in June of 1972 when he accompanied his brother to McNamarra Buick Pontiac in Port Jefferson.

Q What was the purpose of your interview, to see whether or not he could identify any of the individuals who he said were present at that time?

A Yes, sir, it was.

MR. LEONE: May we have those photographs marked for identification?

THE CLERK: Hearing exhibit A, defendant Alphonse Merolla, one exhibit, so marked.

(So marked.)

BY MR. LEONE:

Q I show you defendant's exhibit A for identification, which constitutes four separate photographs, and I ask you whether those are the photographs that you viewed to Mr. Goberman?

A Yes, sir, these are copies of the photograph that I --

Q Those are not the original photographs?

A No, sir.

Q They are copies of the original?

A That is correct.

THE COURT: Well, that is not strictly correct, they are prints from the same.

THE WITNESS: These are contact prints of the negative of the photograph shown.

BY MR. LEONE:

Q Now, in addition to those photographs, did you show any other photographs to Mr. Allan Goberman at that time?

A NO, sir, I did not.

Q Now, prior to this, was this the first interview you had with Allan Goberman?

A No, sir, it was not.

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DIRECT EXAMINATION

BY MR. LEONE: (Cont.)

Q Was this the first interview you had with Allen Goberman pertaining to showing him pictures -- showing him pictures of possible suspects in this case?

A I don't exactly recall. I don't believe so. I think there are other photographs that I have shown Allen Goberman.

Q Would you describe please the people who are depicted in the four photographs that you showed to Allen Goberman on August the 24th of 1973?

A As they appear in the photographs?

Q Yes.

A There are four individuals shown in these four contact prints.

Three of the photographs -- correction -- two of the photographs show only three individuals. The other two photographs show four individuals. The three photographs that show -- the two photographs that show three individuals show the profile views of three individuals, while the two photographs that show four individuals show the profile view of two individuals.

Q Okay.

Can you tell us who is depicted in those

photographs?

A The identities?

Q Yes.

A I only know the identity of only one individual.

Q Who is that?

A Alphonse Merolla.

Q Is he in each of the four photographs?

A Yes, he is.

Q Would you describe these photographs to us for the record, please?

A They are photographs of four individuals or three individuals seated at a table which appears to be in a restaurant.

THE COURT: In a booth.

THE WITNESS: In a booth or at a table in a restaurant.

Q These are not what we refer to as mug shots or individual photographs of one person?

A No sir, they are not.

Q Can you tell us -- withdrawn.

Agent McMullen, you have testified that as to two of these photographs -- correct me if I am wrong -- that they show a side view of two of the people?

A Yes, sir.

Q Two photographs -- the two photographs containing the pictures of four individuals show the profile view of two of those individuals, one of them being Alphonse Merella?

A That's correct.

Q The other person you do not know?

A No sir, I do not.

Q There are two other people in that photograph?

A Correct.

Q Is it accurate to say that the photograph depicts the backs of the heads of those individuals?

A Yes, sir.

Q Actually, there are only two people whose faces can be seen in each of those two photographs?

A Correct.

Q Directing your attention to the other two photographs, is Mr. Merolla depicted in each of those photographs?

A Yes, he is.

Q Can his face be seen in those photographs?

A His profile view can be seen, that is correct, sir.

Q How many other people are in that -- those two photographs?

A Two other individuals, sir.

Q Now, are those photographs basically the same photographs -- are the people in those photographs in exactly the same position at that table?

A Yes, sir.

THE COURT: Let us be a little more careful. Ask are they occupying the same seats.

THE WITNESS: Yes, sir.

Q Are they occupying the same seats?

A Yes, sir.

Q Are their faces and heads in the same position in each photograph?

A Yes, sir.

Q Is it not fair to say that it is practically a duplicate picture?

A Yes, it is fair to say, but to be certain I would like to take a look at the negatives.

Q We will get to that.

Directing your attention to the other two pictures, is it fair to say that those two pictures appear to be at least to the eye the same picture -- the duplicate?

A Yes, sir.

Q So isn't it fair to say that in reality what you have here are really two separate pictures or two different

pictures rather than four?

A Well, there are four negatives, so there are four photographs and there were four shots taken, so we have four photographs. They may have been taken within a very short sequence of time, one second apart, but they are definitely four photographs that were taken.

Q Basically there are no substantial differences between these?

A No, sir.

Q And no difference between these (indicating)?

A No, sir.

Q If I moved them around, you couldn't tell which was which from looking at the photographs?

A No, sir.

Q Now, the purpose of this interview with Mr. Goberman was to see whether or not he could identify anyone at that McNamara Buick place on June the 5th?

A Correct.

Q Did you have a suspect in mind when you went to see him?

A It's very difficult to say, Mr. Leone, for a lot of reasons in this case. I don't recall if I had specifically a suspect in mind. If youwant to get into how these came into our possession --

Q Let me get my point across and I will let you speak.

When you went to see Mr. Allen Goberman on this date carrying these four photographs, did you not have in mind that Mr. Alphonse Merolla was a suspect in this case?

A Yes.

Q You knew that, right?

A Yes.

Q Did you go there to see whether or not he could identify Alphonse Merolla?

A Yes.

Q Did you make any attempt to include in the array of photographs which were presented to the witness photographs of other individuals that had the like appearance or like shape of Mr. Merolla?

A No, not other than those individuals in the photographs.

Q You did have photographs at the FBI office or in your possession that depicted other gentlemen that were approximately the same height and build that Mr. Merolla is?

A Yes, but not that type of photograph.

I did not have anything in my possession of that type.

Q Not this type?

A If I were to show you a mug shot with that photograph, you wouldn't consider it a like photograph. I'd have to show you a photograph of four individuals seated at a table and this doesn't show the complete height and weight. All it shows is one or two arms. The only thing that I would say that would be completely descriptive would be his profile.

THE COURT: I think Mr. Leone's question was; Didn't you obtain police photographs or FBI identification photographs of the defendant Alphonse Merolla -- did he ever work for the Post Office, did he have a driver's license?

THE WITNESS: Could I have obtained other photographs?

THE COURT: For comparison purposes.

THE WITNESS: Yes, if that's the question.

MR. LEONE: Yes, that was the heart of it.

THE WITNESS: I don't recall.

As I recall now I didn't know anything about that Alphonse Merolla in that photograph other than he was an Alphonse Merolla and these photographs were sent out to me by my supervisor in the New York Office, which said that another police agency had sent these, and said there is an individual in this photograph

that is an "Alphonse Merolla" and these photographs were taken within a short period of time after they were sent out to me. They wanted to know if they were identical to anyone in my case and if I could provide them with information.

I didn't know who that Alphonse Merolla was. All I knew he had a name.

THE COURT: The big question, do you want to' ask it, Mr. Leone?

THE WITNESS: It is from that identification that we proceeded to find out who that Alphonse Merolla was.

THE COURT: No, next question.

BY MR. LEONE:

Q Agent McMullen, when you went to see Allen Goberman --

A Yes, sir.

Q -- had you shown anybody else the photograph of the Alphonse Merolla depicted in that photograph?

A Yes, I believe I did.

Q Did you show this photograph to Harold Goberman before you went to see Allen Goberman?

A I think within a day or so -- I think a day before.

Q Didn't Harold Goberman identify this photograph to you as being the person that he knew as "Fat Nicky"?

A Yes, he did.

Q Before you went to see Allen Goberman --

A Yes, sir.

Q -- did you make any attempt at that time to get a photograph of this individual -- a police photograph, a mug shot?

A Again, Mr. Leone, at that time I don't particularly think that I had any biographical data as to Alphonse Merolla. I didn't know who he was. I knew the name, that's all. There are more than one Alphonse Merolla. I don't think I had at that time enough or sufficient information to obtain any biographical data or to send out any other leads to take additional photographs.

(Continued on next page.)

Notes

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